Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

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JOSE F. OLIVARES AND NANCY C. OLIVARES,
Individually and as Trustee

Petitioners

v.

BIRDIE L. NIX TRUST

Respondent

_____Δ_____

On Petition For A Writ Of Certiorari
To The Supreme Court Of Texas

_____Δ_____

PETITION FOR A WRIT OF CERTIORARI

_____Δ_____

Jose F. Olivares &
Nancy C. Olivares
151 North Drive
San Antonio, Texas 78205
Tel: (210) 735 5401

QUESTIONS PRESENTED

Q-1 Were Petitioners treated different than other Texas citizens, in a similar situation, by a decree of the Texas Government Judiciary that creates an ultra vires exception to the exclusive statutory mandate for creation of judgment liens; and, despite undisputed facts evidencing the statute,[1] was not followed by the alleged judgment lien holder [unabashedly favored by said decree]; and, to the deprivation of Petitioners' right to equal protection and due process under the law related to their proprietary rights?

Q-2 Were Petitioners treated different than other Texas citizens, in a similar situation, by a decree of the Texas Government Judiciary that purports to revive a judgment which was dead for more than fifteen years, by raising the standing of an alleged judgment lien to that of a contractual mortgage, where such action is contrary to and usurptive of statutory provisions for extending the life of a judgment and by said disparate treatment depriving Petitioners of equal protection and due process under the law with respect to proprietary rights.

Q-3 Were Petitioners treated different than other Texas citizens, in a similar situation, by a decree of the Texas Government Judiciary that purports to raise the standing of an alleged judgment lien to that of a mortgage in order to disparage the

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[1] § 52.003, Texas Real Property Code

validity of substitute trustee deeds recorded for more than 25 years, and not proven void, in order to divest Petitioner Nancy C. Olivares of title; and thereby depriving Petitioners of equal protection of the law with respect to their proprietary rights?

Q-4 Were Petitioners treated different than other Texas citizens, in a similar situation, from the incept of the condemnation proceedings of real property by decrees of the Texas Government's Judiciary that amount to the taking of private property without: a) a final judgment, in fact, for the reason that b) the Final Judgment Nunc Pro Tunc leaves issues for later adjudication as to various parties, including alleged lienholders who "selected not to appear" at the trial where contrary to law and established procedure, only the fair market value was tried before the jury; and c) without making an unencumbered distribution of the award; and, thereby depriving Petitioners of equal treatment and due process under the law, resulting in no payment of just compensation to Petitioners?

Q-5 Were Petitioners treated different than other Texas citizens, in a similar situation, by the grant of attorney fees to an alleged judgment lien holder whose underlying judgment was dead for more than sixteen years and where no statutory authority exists for award of attorney fees in the collection of a judgment; and, thereby depriving the Petitioners of equal protection and due process under the law?

Q-6 Were Petitioners treated different than other Texas citizens, in a similar situation, by the Texas Supreme Court's refusal to review the Novemer 5, 2003 Opinion of the Fourth Court of Appeals that affirmed the October 11, 2002 Final Judgment of the trial court and that deprives Petitioners of their proprietary rights, without due process, because the same is pursuant to the underlying interlocutory "Final Judgment Nunc Pro Tunc" from which the trial court derived its putative authority to act; and, thereby depriving the Petitioners of equal protection and due process under the law?

Q-7 Were Petitioners treated different than other Texas citizens, in a similar situation, by the refusal of the Fourth Court of Appeals and of the Supreme Court to entertain and grant a writ of mandamus directing the presiding judge of the 225th District Court of Bexar County, Texas to enter the Judgment on Jury Verdict, in cause 77-CI 17935, that should have been rendered on February 16, 1978; and, does such refusal deprive Petitioners of equal protection and due process under the law?

PARTIES NOTICED BELOW

NAME	ATTORNEY AND/OR ADDRESS
Birdie L. Nix Trust (BNT, Respondent)	Oppenheimer, Blend Harrison & Tate, Inc. 711 Navarro St. 6th Fl. San Antonio, TX 78205
*Porter Poultry & Egg Company, Inc.	5475 Highway 90 Expwy. San Antonio, Texas 78227
*Leif Zars	438 Sandau Road San Antonio, Texas 78216
*Polunsky Company	1224 N. Flores St. San Antonio, Texas 78201
*State Of Texas, Bexar Pena County, Et al	Linebarger Goggan Blair & Sampson, L.L.P 711 Navarro, Suite 300
*Central Distributing Company	Ronald J. Johnson, Atty. 105 S. St. Mary's St. San Antonio, Texas 78205
Service Finance Corp. d/b/a Commercial Equipment Leasing Co	Address unknown

City of San Antonio Development Agency (formerly Urban Renewal Agency, URA) 1400 S. Flores, San Antonio, Texas 78204.

*These parties were noticed of matters leading to Petition For Writ Of Certiorari. None appeared. Except for URA 1978) all other parties, including BNT "selected not to appear" at the 12/4/ 1978 trial in cause 77 CI-17935. (Appendix 2, p.1)

ORDERS/JUDGMENTS BELOW

1) Charge Of The Court Trial Court No. 77 CI 17935 225th Judicial District Bexar County, Texas	Appendix 1 December 21, 1978
2) Final Judgment Nunc Pro Tunc Trial Court No.77 CI 17935 225th Judicial District Bexar County, Texas	Appendix 2 February 16, 1979
3) Motion For Judgment On Jury Verdict	Appendix 3 July 29, 2002
4) Order On Motion For Judgment On Jury Verdict	Appendix 4 July 31, 2002
5) Denial of Petition For Mandamus Cause No. 04-02-00607 Fourth Court of Appeals San Antonio, Texas	Appendix 5 October 8, 1979
6) Final Judgment Trial Court No. 77 CI 17935 225th Judicial District Court San Antonio, Texas	Appendix 6 October 11, 2002
7) Opinion Appeal No. 04-02-00942 Fourth Court of Appeals San Antonio, Texas	Appendix 7 November 5, 2003
8) Denial of Petition For Review No. 03-1141 Supreme Court of Texas	Appendix 8 January 23, 2004

ORDERS/JUDGMENTS, continued

TITLE	APPENDIX/DATE
9) Motion For Rehearing No. 03-1141	Appendix 9 March 2, 2004
10) Denial of Motion For Rehearing No. 03-1141 Supreme Court of Texas Austin, Texas	Appendix 10 April 9, 2004
11) Dismissal of Application For Writ Of Mandamus No. 04-0296 Supreme Court of Texas Austin, Texas	Appendix 11 April 9, 2004
12) Abstract of Judgment District Clerk in and for Bexar Couny, Texas	Appendix 12 March 15, 1976
13) Certification Of No Execution On Dormant Judgment District Clerk in and for Bexar County, Texas	Appendix 13 June 21, 2002

JURISDICTION

On April 9, 2004, the Supreme Court of Texas denied Petitioners' Motion For Rehearing on their Petition For Review (Cause No.03-1141) of the November 5, 2003 Opinion by the Fourth Court of Appeals, affirming the October 11, 2002 Final Judgment of the 225th Judicial District Court. Their Application For Writ Of Mandamus, (Cause No. 04-0293) and motions in each case for their consolidation were also dismissed.

Jurisdiction is proper under 28 U.S.C. § 1257 to review by certiorari the final judgments from the Fourth Court of Appeals, San Antonio, dated November 5, 2003 and as to which the Texas Supreme Court denied review on January 10, 2004; and on April 9, denied a Motion For Rehearing and dismissed a related and pertinent Application For Mandamus. A like Petition For Writ Of Mandamus was denied by the Fourth Court of Appeals on October 8, 2002.

Under the 5th and 14th Amendments to the United States Constitution, Petitioners have a right to due process and equal protection of the law. The Judgment (Opinion) of the Fourth Court of Appeals, 126 S.W.3d 242, (Appendix 7) legislates exceptions to statutory prerequisites, which are exclusive for creation of judgment liens, and usurps case law of long standing, to deprive Petitioners equal protection and due process of the law in condoning the interlocutory judgment of the trial court and orders derivative there from that aided the taking of private property without due process and compensation.

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STATEMENT OF CASE

This case concerns the very means by which courts of the land dispense justice----- judgments. On February 16, 1979, the 225th District Court of Bexar County, Texas issued its Final Judgment Nunc Pro Tunc in *Urban Renewal Agency* (URA) *of the City of San Antonio v. Jose F. Olivares, et al*, No. 77 CI 17935, a condemnation case. Although not central here, this judgment (Appendix 2), is the foundation for the October 11, 2002 Final Judgment (Appendix 3), that is immediate to this Petition. The Nunc Pro Tunc decree speaks for itself, to-wit: **a**) after a jury trial starting on December 4, 1978, wherein the proceedings were controlled and limited to the fair market value of three separate properties[1], the jury returned a verdict on the court's charge 17 days later (Appendix 1); **b**) the alleged lienholders, including the Respondent hereto (the Birdie L. Nix Trust, BNT), "selected not to make an appearance" (See, Appendix 2, p. 1). In fact none, except BNT, have responded to notices sent in connection with the underlying proceedings; and **c**) the February 16, 1979 judgment remains interlocutory because, on its fact, all issues as to all parties[2] are not resolved; and, for that reason not appealable.

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[1] All three properties were in the same centrally located block; the corner property and the one adjacent to it were combined as one by the condemnor to negatively affect their value. They were designated "NOT TO BE ACQUIRED.

[2] In *City of Paris v. Tucker*, 104 S.W.1040, the Texas Supreme Court reaffirmed fundamental law holding that title does not pass to the condemnor where the judgment does not allocate (unencumbered) the award (consideration) to the owners.

The land subject of the condemnation was physically taken on September 16, 1976 without a writ of possession, pursuant to an unauthorized condemnation statement filed on May 6, 1976 by URA's attorney in the name of the City of San Antonio. Owners forced its dismissal on March 21,1977 but neither the land nor the chattels were ever returned to them, nor damages paid. See, *Warner, et al v. City of San Antonio*, 564 S.W.2d 435.[3] The second filing, again in County Court at Law No. 6[4], was later transferred to the 225th District Court on presumed issues of title. But, this court wholly disregarded the supposed title issues before the jury (See, Nunc Pro Tunc Judgment, Appendix 2). This, despite fact Owners were present and ready at all times. The award never was transferred to said district court; and, none of the alleged lienholders ever took steps to enforce rights, if any, under said judgment. Moreover, none proved their liens, if any, either at the December 4, 1979 trial or otherwise.

On March 15, 1976, Respondent BNT filed an insufficient Abstract of Judgment (Appendix 12) that it used as basis to intervention in the first unauthorized filing and in the second by URA against land, already appropriated without a writ of possession. On March 16, 1986 the

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[3] Prior to BNT's intervention in the first unauthorized condemnation Jose F. Olivares' title to the property was foreclosed by Geo. e W. Warner and subsequently transferred his title to Petitioner Nancy C. Olivares, Trustee.

[4] Statute requires that condemnation statements be filed with the Judge of the County Court at Law. If a title issue, or other matters outside said court's jurisdiction arise, the case is to be transferred to the district court.

judgment became legally dead and unenforceable, because a valid abstract was not reissued within 10 years, nor any execution effected. The Certification Of No Execution On Dormant Judgment is shown on Appendix 13. BNT did not prove its judgment lien at any time before the judgment's dormancy. Its abstract of judgment wholly failed to comply with §52. 003, of the Texas Property Code[5], and therefore was not effective to create a judgment lien.

In April, 2002, Nancy C. Olivares, Trustee, initiated steps to withdraw the funds from the County Court. She was joined by her husband, Jose F. Olivares. Notice was given to all the parties named in the Nunc Pro Tunc Judgment. Only BNT appeared and Petitioners had no choice but to follow the unauthorized[6] directive of the interlocutory Final Judgment Nunc Pro Tunc, namely, "*...thereon in lump sum and depositing said sum in the registry of the County Court at Law No. 6 subject to the interests of the owners and claimants of the property; said interests to be later disposed of in a proper Motion for Adjudication To Question of Title*". (Appendix 2, p.5)

On July 15, 2002 a bench trial was had on a Motion To Adjudicate Title. Petitioners' Motion

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[5] § 52.003, of the Texas Property Code was noted by this Court in *Roy Peralta v. Heights Medical Center*, 108 S.Ct. 896 (1988).

[6] This directive leaves a central issue unadjudicated and the final judgment interlocutory, See, footnote 2. However, the directive is unauthorized because it is a post submission severance which Rule 41, Tex. Rules Civ. P. prohibits. This issue was submitted in Petitioners' Petition For Writ of Mandamus, 04-02-00607-CV.

For Summary Judgment based on failure of BNT's abstract of judgment to comply with §52.003, supra, was denied prior thereto; as was a Motion To Strike BNT's Intervention on lack of standing, which the trial court also denied. An interlocutory judgment was signed on July 31, 2002, denying Petitioners relief and granting BNT a continuance on its Amended Motion For Payment. This was heard on September 16, 2002 and the Final Judgment, subject here and below, was signed on October 11. 2002 (Appendix 6).

On September 27, 2002, Jose F. Olivares and Nancy C. Olivares, Individually and as Trustee, filed a Petition For Writ Of Mandamus in the Fourth Court of Appeals after asking for and being refused by the Honorable John J. Specia, Jr.,[7] now the Presiding Judge of the 225th District Court, a judgment that said court should have entered on February 16, 1979. The Petition, No. 04-02-00607-CV, was denied on October 8, 2002 (Appendix 5) without an opinion.

The appeal from the October 11, 2002 judgment was filed on March 10, 2003. On November 5, 2003, the Fourth Court of Appeals affirmed the trial court judgment. A Petition For Review was denied by the Supreme Court on January 10, 2002. The Motion For Rehearing was denied on April 9, 2004 and an Application For Writ Of Mandamus was simultaneously dismissed along with motions for consolidation.

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[7] Judge John J. Specia, Jr. transferred the matter to Judge Janet Littlejohn, who had presided on the Petitioners' Motion For Adjudication Of Title and BNT's Motion For Payment in the same cause, 77 CI-17935.

The Motion For Rehearing (Appendix 9) complains to the Supreme Court that Petitioners, as Mexican-American (Jose F.) and Spanish surnamed American (Nancy C.), have been denied due process and equal protection of the law, to which they are entitled under the Constitution of the United States by the activism and disparagement of the law which the records in the lower courts demonstrate. Petitioners' counsel up to the filing of the Petition For Review to the Texas Supreme Court, as well as other legal experts with whom the issues were discussed staunchly felt that present day Texas Judiciary would follow established law, despite the record of prior oppression. The same represents the presumption of unbiased fairness that Petitioners accord to the judicial branch of Texas Government. That is one reason that deprivation of constitutional guarantees was not made until after the Supreme Court declined review of the November 5, 2003 Opinion of the Fourth Court of Appeals. The high court's refusal to review is complained of, not only, as a denial of equal protection under the law and of due process where the subject matter is more than de minimus,[8] but as an misuse of judicial discretion in that it permits and approves a whole package of transgressions by the Texas Government Judiciary into the legislative province of the state, which is a violation of the state and federal constitutions' mandate of power separation and of the federalism for which the United States Constitution stands.

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[8] Parrat v. Taylor, 451 U.S.527

PETITION FOR WRIT OF CERTIORARI

The issues submitted that amount to the subjection of Petitioners to a different treatment and denial of due process with respect to proprietary rights track the same six issues that were presented to the Supreme Court. An asterik and a number in parenthesis (*N) indicates the number identifying the issues as presented to the court of appeal. The improper attorney's fees were not challenged at the appellate level. Issue One, in two parts, and Issue Two are interrelated. They cover §52.003, Texas Property Code Ann (Appendix 15). Issue 3 goes to the dormancy of BNT's judgment (V.T.C.A., Civil Practice and Remedies, §34.001[b], Appendix 15). Issues 4 and 5 address the title issue. Issues 6,7 attack the unjustified attorney's fees and the refusal of the Supreme Court to review the November 5, Opinion of the Fourth Court of Appeals, 126 S.W.3d 242 (Appendix 7). Issue 8 complains of the denial of the writ of mandamus, both by the Supreme Court and the lower court, as the same equals a denial of equal protection and due process under the law by the Texas Government Judiciary.

Throughout this text, Petitioners urge the record deprivation of equal protection and due process of law, as is clearly shown on the face of the "Final Judgment Nunc Pro Tunc" of February 16, 1979, which is in fact interlocutory and not appealable; and, where BNT was preferentially allowed to "select not to make an appearance" at the trial. The same is a severance contrary to Rule 41, Texas Rules of Civil Procedure (TRCP)

Issue 1(*2): The file below contains the full transcript of the testimony and arguments in

connection with the October/11/2002 Final Judgment and related rulings. However, Issue 1 (*2) is one where testimony only serves the introduction of documents. The November 5, 2003 Opinion by the Court of Appeals (Appendix 7, p.8) agrees with the fact that BNT's Abstract of Judgment does not show the address of defendant, as required by §52.003,(a)(04): "*Here, BNT's abstract does not provide the defendant's address but does provide citation information*". On p. 9, the Court also states the law: "*The statutory language makes the defendant's address mandatory*".

The court then transgresses into legislating the "do not leave creditor to decipher" exception to the statutory mandate: "*The difficulty in this case is that two conflicting addresses were set forth.*[1]" (p.9). On the same paragraph, it then adds: "*Jose Olivares admitted that the address designation of his office changed, but there is no testimony that the second address was revealed as an updated address to BNT.*"[2] The Court cites no authority to support that a party to a lawsuit has a duty to ensure that an antagonist has knowledge about a matter that is in the public domain. Moreover, there is no evidence that defendant moved without giving notice of the location change; and, the statute simply requires that the address be shown. §52.003 (4) does not require that it be the correct or *definitive* address

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[1] The original petition indicates the address is 722 West Commermerce while a subsequent affidavit indicates the address is 332 West Commerce. (footnote 6, in the Opinion)

[2] Jose Olivares actually testified that the location of his office was the same and that the City of San Antonio changed street numbers.

as long as it is found in the case. The statute has nothing to do with service, as the court misstates the issues, but everything to do with the creation of a valid judgment lien. In *Apostolic Church v. Am. Honda Motor Co.*, 833 S.W.2d553 (Tex. App.—Tyler 1992), where the defendant's address was shown as "Tenaha Hwy, center, TX." the court held there was substantial compliance with statute. BNT's abstract of judgment shows nothing despite fact that the suit indisputably contains defendant's address.

The "do not leave creditor to decipher" exception to statutory mandates legislated by the appellate court is contrary to established law. In *Caruso v. Shropshire*, 954 S.W.2d 115 (Tex. App. San Antonio 1997), the same court held: "*It is well settled in Texas that it is the judgment creditor's responsibility to insure that the clerk abstracts the judgment properly*". The Court has treated Petitioners different from others in the same situation, not as well settled law proscribes, by shifting the burden of insuring that an abstract of judgment is done right. Its words are: "*A creditor should not be left to decipher which address or how many addresses to include in the abstract of judgment, but should simply ensure that proper service is carried out and that the citation is sufficient to provide notice*"[3]. Again, §52.003 is in no way directed to service being

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[3] In their Motion For Rehearing, Petitioners argue that BNT did not plead nor submit evidence that it even tried to decipher the address variance or what hurdles kept it from doing so. The appeals court made a finding from no evidence. See, *Goldston Corp. v. Hernandez*, 714 S.W.2d 350 (Tex. App.–Corpus Christie 1986, writ ref'd n.r.e.).

carried out or to the sufficiency of the citation. In the subjunctive, §52. 003 (4)[4] allows for the requirement to be met, "or, if the address is not shown in the suit, the nature of citation and the date and place of service of citation". The statute does not say if the definitive address is not shown. The plain language of the statute is simply: "..if the address is not shown". And, the plain language thereof and the admitted facts do not lead to an absurd result, except as concluded by the transgression of the court's authority. *In Citicorp Real Estate v. Banque Arabe*, 747 S.W.2d 926 (Tex. App.—Dallas 1988), the trial court was reversed for "effectively creating a public notoriety exception" to §52. 003 (4), where the defendant's address was not shown. The litigation there was between judgment creditors of Clint W. Murchison, a well publicized oil man. "*A defendant's prior or present notoriety does not obviate the need for substantial compliance with the statute.*" was the Dallas court's statement of the law. Here, the court's argument verges on facetiousness, except for its discriminatorily adverse and oppressive effect on the Petitioners' rights, as the same are guaranteed by the state and federal constitutions. Having thus created an improper exception to, the court then proceeded to the subjunctive of §52. 003 (4).

Petitioners were deprived of a substantive and procedural right when the trial court allowed the alleged lien holders to "select not to make an appearance" at the December 4, 1978 trial, ins-

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[4] §52.003, Tex. Prop. Code Ann. recites: "the defendant's address or if address is not shown in the suit, the nature of the citation and the date and place of citation".

tead of holding them in default. Had Petitioners been given the opportunity to challenge the validity of the abstract of judgment at the jury trial, (which is a valuable constitutional right) they would have proven that the defendant's address was not shown on the abstract and at that time exhaustively establish that the suit contained a definitive address. establish that the suit contained a definitive address. At that point, even if BNT had secured a second valid abstract of judgment, it would have been of no import as to the subject land. See, *Beutel v. Dallas Cty. Flood Control*, 916 S. W.2d 685 (Tex. App—Waco 1996), holding that a party with a justiciable interest, such as BNT, must intervene with a valid judgment lien before the land is actually taken by the condemnor. In the instant case, not only was BNT's intervention without a valid abstract of judgment but after the land was actually taken by URA, without a writ of possession, pursuant to an unauthorized filing (See, *Warner, et al v. City of San Antonio*, 454 S.W.2d 435, (Tex. App.—Eastland 1977). The deprivation of these substantive and procedural rights which all other citizens enjoy, in a similar situation, is a denial of equal protection and due process under the law.

Issue 2: Petitioners insist that the mandate of the statute has not been met and for that reason BNT's abstract of judgment was void from day one. Nevertheless, an objection was made to the appellate court's reliance on the subjunctive to hold that substantial compliance was met by BNT. In brief, Petitioners urge that the recitation "*...Jose F. Olivares who was served on July 24, 1969 in Bexar County*" also does not squarely

meet the clear language of the statute that the abstract show "nature of citation and the date and place of service of citation". BNT's abstract does not state what Jose F. Olivares was served. The nature of citation includes "personal, by substitute service, and/or publication"; the place of service of citation has to be more than a jurisdictional geographic area. The appellate court acknowledges that "*The conditional language triggering the alternative has not been addressed by Texas appellate courts*". (Appendix 5, p.7). Thus, the Supreme Court of Texas was presented a true "case and controversy" whereby the issues of what is required by the subjunctive of §52. 003 (4), matters of statewide importance, could have been addressed. It chose not to serve that purpose and by its reluctance deprived Petitioners of equal protection and due process under the law.

Issue 3 (*3): Petitioners were further subjected to different treatment under the law and a denial of due process by the Texas Government Judiciary's decree reviving a dead (permanently dormant) judgment contrary to V.T.C.A., Civil Practice and Remedies §34.001. A summary judgment against Jose F. Olivares and his father, Joe Olivares (deceased) was granted on November 24, 1975 to BNT. A writ of execution issued on January 23, 1976 and an invalid abstract of judgment on March 16, 1976, (See, Issue 2, above). There were no more writs of execution issued; nor any other (valid or not) abstracts of judgment obtained. As of March 16, 1986 the BNT's judgment became dormant. See, Certification Of No Execution On Dormant Judgment (Appendix 13). As with §52. 003, the Court faithfully recites the

law governing the life of a judgment, citing *Burton Lingo Co. v. Warren*, 45 S.W.2d 750 (Tex. Civ. App.—Eastland 1931, writ ref'd). Opinion, Appendix 7, p. 10). It also states on the same page that the "*...judgment lien created by the abstract of judgment expired before the trial court ordered payment to BNT from the registry*".

Petitioners call attention to the fact that BNT "selected not to make an appearance" at the December 4, 1978 trial (Appendix 2 p.1)—a point not noted by the appellate court. Petitioners were deprived of a valuable substantive and procedural right for the reason that now, the appellate court raises BNT's "alleged" judgment lien, which is an involuntary one as a matter of law, to the level of a voluntary lien which at the time of its creation vests in the creditor an interest in the property. It does so in order to reach the untenable proposition that BNT acquired an interest in the award (with an invalid abstract of judgment) that survives the dormancy of the judgment itself. The law cited by the court applies to voluntary lien holders only. For example, "[W]*here the whole of the mortgaged property is taken in eminent domain proceedings, the mortgagee is entitled to all of the award or so much of it as is necessary to satisfy the mortgage indebtedness*". *Buell Realty Note Collection Trust v. Central Oak Inv. Co.*, 483 S.W.2d 24 (Tex. Civ. App.—Dallas 1972). Clearly, the land condemned here was not mortgaged and BNT was not a mortgagee but an unproven judgment creditor with an invalid judgment lien. In the same vein the court's sleight of hand is demonstrated by its reliance on *Wynnewood Bank and Trust*, 767 S.W.2d491 @496: "*We recognize that a more recent case, however, states that when*

the condemnation proceeds are deposited, the "lien" of a mortgagee is "effectively transferred from the property into the deposit." Emphasis is registered on "mortgagee" because BNT is not a mortgagee. The Final Judgment Nunc Pro Tunc finds BNT to be an "alleged lien holder" (Appendix 2, p.1) and/or a "claimant" (Appendix 2, p.6), but not a mortgagee nor a condemnee, as the appellate mischaracterizes BNT, in order to reach its conclusion. There is no dispute to the fact that BNT was an intervener --- not a condemnee. For that reason, reliance on *Forth Worth Concrete Co. v. State,* 400 S.W.2d 314, (Tex. 1966) (addressing rights of landowner and lessee) and on *Buell,* supra, is improper and outside of its authority. Under the undisputed record facts, established mostly by judgments, there is little or no doubt that Petitioners have been egregiously and systematically deprived of the equal protection and due process under the law by the Texas Government Judiciary where their proprietary interests are concerned. Giving BNT the status of a mortgagor in order to hold that its interest vested in the award at the time it intervened with an invalid abstract of judgment is an act that demonstrates bias and unequal treatment. This abuse of authority verges on a calculated design of the Texas Government Judiciary to deny Petitioners equal protection and due process under the law.

Issues 4,5 (*1): As with the foregoing issues, 1 through 3, the Fourth Court of Appeals follows the same pattern in ruling on the title issues. BNT is raised from holder of a judgment lien, if any, to the level of a contractual lienor; and, that as such

implies the fiction that BNT not have notice of how Warner got title to the properties[5]. There are two central points here. One is notice, the other is entitlement thereto by a judgment lien holder. BNT intervened in the first unauthorized filing in the name of the City of San Antonio and as such had actual knowledge of the interest claimed by Warner. When the illegal filing was dismissed, BNT had notice of *Warner v. City of San Antonio*, supra, but did not join it in order to preserve rights under its original filing. It did not join the appeal; but, simply intervened again on the basis of the same defective abstract of judgment. This was after the actual taking of Petitioners' property by URA[6]. Despite said knowledge, BNT did not contest Warner's title. Instead, it "selected not to make an appearance" at the December 4, 1978 trial where title issues were to be tried. As a judgment lien holder, BNT neither had standing to demand notice of the foreclosure, nor to otherwise challenge it, unless the foreclosure is first shown to be wholly void, which it was not. *Mercer v. Bludworth*, 715 S.W.2d 693 (Tex.Civ. App.-Houston, 1st district, writ ref. n.r.e.). Moreover, only the mortgagor or party in privity

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[5] Warner foreclosed on the land subject of URA's condemnation on December 2, 1975. BNT's abstract of judgment was filed on March 16, 1976.

[6] In the first illegal filing the three properties were separately sued. In the second filing, a corner property with a recorded mortgage that was transferred prior to the condemnation was combined as one parcel with the adjacent lot. The third property was stated by itself. Warner first purchased the mortgage on the corner property from Ed Steves & Sons, Inc. and foreclosed on all three. On the other two Warner was the original mortgagee.

with mortgagor has standing to contest validity of a foreclosure sale pursuant to a deed of trust, *Goswami v. Metropolitan Savings & Loan Assoc.*, 751 S. W.2d 693, 698 (Tex. Civ. App--Houston, district 1, writ ref. n.r.e.). Also of note, the court acknowledges that the foreclosure preceded BNT's alleged judgment lien. It does not however, touch upon fact that any possible rights under the latter were extinguished, as a matter of legal fact, *Houston Investment Bankers Corp. v. First City Bank of Highland Village*, 640 S.W.2d 663 (Tex. Civ. App.-Houston 1982, no writ). The court also fails to note that the foreclosure was by Warner and not by Petitioner. BNT did not join him or his estate anymore than it availed itself of the provisions of the interlocutory judgment until Petitioner Nancy C. Olivares sought to withdraw the funds. By applying law applicable to the situation of a bona fide mortgagor-mortgagee to benefit the judgment lienor, the Texas Government Judiciary effectively denied equal treatment and due process under the law to Petitioners.

Issues 6,7: To wrap up what appear to be concerted efforts by the Texas Government Judiciary to oppress Petitioners, not only by the indifference to the taking of private property without fair compensation and due process, but by legislating exceptions to statute, readaptation of established law and spinning facts, the grant of attorney's fees by the trial court to BNT was deferentially approved by the Supreme Court's refusal to review the lower courts' decrees. There is no statutory authority for the award of attorney's fees for the collection of a judgment. In *Mabon Limited v. Afri-Carib Enterprises, Inc.* 29

S.W.3rd 291 (Tex. Civ.App.—Houston 2000, no writ), the court states: *Afri-Carib is not entitled to attorney's fees for post judgment collection efforts either under the agreement or by statute.* V.T.C.A. Civil Practice and Remedies, §38.001 Attorney Fees is the statute. Refusal to review the November 5, 2003 Opinion of the Court of Appeals effectively denies Petitioners equal protection and due process under the law to Petitioners.

Issue 8: Petitioners also say that they were denied equal treatment and due process under the law by the Texas Government Judiciary's denial of their petitions for mandamus, asking that the Honorable John J. Specia, Jr. the Presiding Judge of the 225th District Court of Bexar County, be directed to enter the judgment that the court should have rendered on 2/16/79. The trial court was first asked to act on July 31, 2002 (See, Appendix 3, Motion To Enter Judgment On Jury Verdict). Judge Specia transferred the motion to the Honorable Jane Littlejohn, who had on July 15, 2002 presided on the Motion For Adjudication of Title. The Petition For Writ Of Mandamus, filed on August 29, 2002, was denied on October 8, 2002 (See, Appendix 5). The same three issues presented to the Fourth Court of Appeals were submitted in Petitioners' Application For Writ Of Mandamus to the Supreme Court on March 30, 2004. The issues were: 1) Is the Final Nunc Pro Tunc Judgment of February 16, 1979 interlocutory and not appealable or final and appealable? 2) Is requesting judgment on the verdict asking for a non--discretionary act to be performed? 3) Have the requisites been met for the issuance of a

Mandamus? On April 9, 2004, the Court denied the application.

Petitioners re-urge their complaint to the effect that the Texas Government Judiciary has used its discretionary powers to deny them equal protection and due process under the law, which are rights guaranteed and protected by the United States Constitution. The issue of whether a judgment is final or not, when presented under a "case and controversy", is the type of question that greatly reduces the Judiciary's discretion to decide or not. It is not like asking for a decision on a legal question that depends on facts. In *Paul David Woosley v. David Smith*, 925 S.W.2d 84, 86, (Tex. App.--San Antonio 1996, NWH), the San Antonio Court held that in order to be final, a judgment must dispose of all parties and issues. In words that more fits the situation here, the court said in *Robert Cowan v. Nancy Moreno*, 903 S.W.2d 119, 124 (Tex. App.--Austin 1995 NWH): *A judgment or order that expressly reserves an issue for later adjudication is interlocutory.* Despite fact that the February 16, 1979 judgment is titled "Final", it fails to resolve all issues as to all parties. Moreover, it reserves the title issue for later adjudication: "*...subject to the interests of the owners and claimants of the property, said interest to be later disposed of in a proper motion for Adjudication To Question of Title.*" (Final Judgment Nunc Pro Tunc Appendix 2, p.6). In *City of Paris v. Tucker*, 104 S.W.1040 (Tex. 1907), the Supreme Court held that where a trial court judgment failed to make an apportionment of the award, title did not pass to the condemnor.

There are two specific Texas Rules of Civil Procedure, TRCP, 300 and 301 (Appendix 14) that impose non-discretionary duties on the court. The first states: "*Where a special verdict is rendered.....the court shall render judgment thereon*". TRCP 301 provides: "*The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict*". The Final Judgment Nunc Pro Tunc does neither. In *American Bottling Co v. Briggs*, 232 S.W.2d 103, 105 (Tex. Civ. App.-San Antonio, 1950, NHW), the court held that mandamus will issue to an inferior court to compel performance of a certain and positive duty made mandatory by law, or where the duty is ministerial and involves no judicial discretion:

A clear procedural digression by the 225th District Court and a specific violation of due process is the grant of a post submission severance. TRCP 41 (Appendix14) prohibits such a severance after jury submission. Although the trial court did not use the word "severance" two record facts make it so. One is a) allowing BNT to "select not to make an appearance", thereby giving it a second bite at the apple; and, 2) leaving the title issue for later adjudication in a "proper motion for Adjudication of Title". Clearly, severance is what the trial court's action did.

The request for mandamus is proper when three conditions exist: 1) a legal duty to perform a non-discretionary act, 2) a demand for performance, and 3) a refusal by the party having the duty or legal power, *Doctors Hospital Facilities d/b/a Doctors Hospital, et al v. Fifth Court of Appeals et al*, 750 S.W.2d 177, 178 (Tex 1988). By denying Petitioners mandamus relief, the Texas

Government Judiciary deprived them of the equal protection and due process of the law under the United States Constitution, in as much as refusal to grant relief in the egregious situation to which they have been relegated, casts them into a limbo of no recourse and oblivion.

This Petition submits, not one, but a series of instances where their right to equal protection and due process of law has been violated in what appears to be a concerted effort by the Texas Government Judiciary to do so; and, not an isolated instance of misjudgment. There is no question that inherent to the courts' decision making power, they enjoy the privilege to be right or wrong. In the case here, the appearance is the courts only read the page of wrongs and don'ts and overlooked the one on rights and do's. In sum the pattern further seems to be the formula for judicial activism. The Fifth Circuit has recognized that a combination of procedural errors can reach a level that renders a judgment void for want of due process, *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Cir.), cert. denied, 338 U.S. 816 (1949); *Fehlhaber v. Fehlhaber*, 681 F2d 1015, 1027 (5th Cir. 1982). In *Barclay v. Florida*, 436 U.S. 940, 956, this Court stated that errors in state law can rise to a level where they deprive an individual litigant of his federal constitutional rights. Whether by act or omission, no judicial branch of state government should indulge in such performance because the effect thereof is to make more remote the goal of federalism; of which a basic tenet is making real that the United States is a land of law, where the powers of government are truly separated.

This Court has consistently said that the Fourteenth Amendment requires judicial proceeding to be conducted in a fundamentally fair manner, *Lassiter v. Department of Social Services of Durham City*, 452 U.S. 18, 33 (1981); and, in *Eagles v. United States*, 329 U.S 304 (1946) @ 314, also stated that procedural irregularities will result in the denial of due process where the defects are so unfair as to deprive the proceedings of vitality.

CONCLUSION

Based on the reasons stated, probable jurisdiction should be noted.

Respectfully submitted,

Nancy C. Olivares, pro se
151 North Drive
San Antonio, Texas 78201
(210) 735 5401

Jose F. Olivares, pro se
151 North Drive
San Antonio, Texas 78201

July 2004

NO. 77-CI-17935

URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO	) IN THE DISTRICT COURT
VS	) 225th JUDICIAL DISTRICT
JOSE F. OLIVARES, ET AL	) BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

I.

This case is submitted too you on special issues consisting of specific questions amount the facts which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I now give you additional instructions which you should carefully and strictly follow during your deliberations.

II.

Do not let bias, prejudice or sympathy play any part in your deliberations.

III.

In arriving at your answers, consider only the evidence introduced here under oath, under the rulings of the Court; that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations you will not consider nor discuss anything that is not represented by the evidence in this case.

IV

Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

V.

You must not decide who you think should win, and then try to answer the question accordingly. Simply answer the questions; and do not discuss nor concern yourself with the effect of your answers.

VI.

You will not decide an issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

VII.

You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the foreperson shall sign the verdict for the entire jury.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct, and it may require another trial by another jury; then all of our time will have been wasted.

The foreman or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this Charge in a sense which varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." "PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case.

You are instructed that testimony by witnesses not having first-hand knowledge of the matter stated that certain properties had sold for certain prices shall not be considered as evidence that such properties have sold, or that such properties have sold for the prices stated, or as evidence of the market value of the property involved, but may only be considered as being information which the witnesses testified they gathered for the purpose of forming an opinion of the market value of the property involved.

You are instructed that the term "market value" is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it was reasonably adaptable on June 16, 1977, and for which it either is or in all reasonable probability will become available within the reasonable future.

In arriving at fair market value, you are instructed that you may not arrive at the value of the unit by merely adding the separate value of the land to the replacement value of the improvements.

In this case, you are instructed therefore that since improvements ordinarily have no market value alone, in arriving at the market value of the property, you may only consider the value of the improvements to the extent that they add to, increase and enhance the value of the land, if any.

You are not to consider the testimony of James Falbo or Henry Fox as to the replacement costs for any purpose.

You are further instructed that in your answers to the following special issues, you shall not take into consideration

any increase in value, if any or any decrease in value, if any, which may have resulted to Defendants property due to Urban Renewal Agency of the City of San Antonio's St. Paul Square Project.

After you retire to the jury room, you will select your own foreman. The first thing the foreman will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the foreman:

1. to preside during your deliberations;
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge;
3. to write out and hand to the bailiff: any communication concerning the case which you desire to have delivered to the judge:
4. to vote on the issues;
5. to write your answers to the issues in the spaces provided; and
6. to certify to your verdict in the space provided for the foreman's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff of this Court. You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

The questions submitted to you, to be determined by you from the evidence, and answered by yes, are as follows:

QUESTION #1

From a preponderance of the evidence, what do you find was the market value of Defendants' property at 1154 E.

QUESTION #2

From a preponderance of the evidence, what do you find was the market value of Defendants' property at 1164 E. Commerce, known as Parcel No. 679-7 (Buildings B & C), on June 16, 1977?

Answer in Dollars and Cents.

Answer: $57, 500.00

When you have answered all the questions which you are required to answer under the instructions of the judge, and your foreman has placed your answers in the spaces provided, and signed the verdict as foreman or obtained the signatures, you will advise the bailiff at the door of the jury room that you have reached a verdict, and then you will return into Couirt with your verdict.

"s/Alfonso Chapa"
ALFONSO CHAPA
Judge Presiding
225th Judicial District Court

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into Court as our verdict.

(To be signed by the foreman
(if unanimous)
"s/David R. Friederick"
Foreman

(To be signed by those rendering the verdict if not unanimous.)

Charge Read:
FILED
Dec. 21, 1978
11:04o'clock
ELTON R. CUDE
Clerk of the District Courts
Bexar County, Texas
By:"s/James Vollmer"
Deputy

Verdict Rec'd
FILED
Dec. 21, 1978
4:12 o'clock p.m
ELTON R. CUDE
Clerk of the District Courts
Bexar County, Texas
By: "s/James Vollmer"
Deputy

NO. 77-CI-17935

URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO	) IN THE DISTRICT COURT
VS	) 225th JUDICIAL DISTRICT
JOSE F. OLIVARES, ET AL	) BEXAR COUNTY, TEXAS

FINAL JUDGMENT NUNC PRO TUNC

On the 4th day of December, 1978, came on to be heard and considered the above entitled and numbered Cause in which the URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO is Plaintiff and is represented by its Attorneys of Record and the Defendants are: Owners and Claimants, JOSE F. OLIVARES, appearing pro se, NANCY OLIVARES, appearing through her legal attorney, and the Estate of GEORGE W. WARNER, appearing through its legal representative, the Taxing Agencies of the CITY OF SAN ANTONIO, STATE OF TEXAS, COUNTY OF BESAR and SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, and alleged Lienholders, Porter Poultry and Egg Company, Birdie L. Nix Trust, Service Finance Company, Leif Zars, Central Distributing Company, Tuck R. Chapin and John M. O'Connell, all lienholders were notified of the trial but selected not to make an appearance; all the parties who made their appearance did so for all purposes and announced ready for trial; and the Defendants having demanded a jury trial, a jury of twelve (12) lawful jurors was then impaneled on December 12, 1978.

The Plaintiff then proceeded to introduce evidence on the issue of its right to take the property and after presenting said evidence the Court found as follows: (1) That the Plaintiff followed the proper procedure as prescribed by law; (2) That all prerequisites of jurisdiction had been complied with by Plaintiff in the condemnation of the property described herein; (3) That Plaintiff was entitled to condemn said

property and had complied with the requirements of the laws of the State of Texas concerning said condemnation; (4 That The Plaintiff had complied with the other prerequisites for the use of the power of eminent domain by having heretofore filed a Vol. 297A PAGE 360 Proceeding with the Judge of the County Court at Law Number Six who thereafter appointed three (3) Special Commissioners to determine the matter herein in condemnation as ;provided by law; and said Commissioners having taken their oath, duly qualified after appointment, and designated a time and place for the hearing and the issuance of process, and that subsequently on June 13, 1977, said Commissioners held a hearing and thereafter awarded the following sums:

(A) In connection with Parcel 679-4 owned by Jose F. Olivares, Nancy Olivares and the Estate of George W. Warner- $20,000.00;

(B) In connection with Parcel 679-7, owned by Jose F. Olivares, Nancy Olivares and the Estate of George W. Warner- $57,500.00.

Objections to said awards were duly and timely filed within the provisions of the laws of the State of Texas by the Defendants.

After making the findings above concerning the right of Plaintiff to take the property described herein, the Court then proceeded with the trial on December 13, 1978, on the sole issue of the market value of the two properties; the attorney for Nancy Olivares presented his evidence, entered his exhibits, called his witnesses and presented their testimony, and having presented the foregoing rested and closed; the Estate of Warner presented no evidence and thus rested and closed; Mr. Jose F. Olivares presented no evidence, entered no exhibits and called no witnesses in regards to establishing and proving any leasehold interest he might have in the properties and hence rested and closed thus getting a default on same; the Plaintiff presented its evidence, entered its exhibits, called its witnesses and presented their testimony,

and after having presented the foregoing rested and closed; the attorney for Defendant Nancy Olivares presented evidence and testimony on rebuttal; accordingly, after the presentations of evidence, the entry of exhibits, the close of the testimony, and argument by counsel for Plaintiff and Defendant, Nancy Olivares, the Estate of George W. Warner presented no final argument,

-2- VOL.297A PAGE 361

the jury was submitted the Court's Charge inquiring as to the following two (2) questions and the jury answered said questions as follows:

Question No. 1

From a preponderance of the evidence, what do you find was the market value of Defendants' property at 1154 E. Commerce, known as Parcel No. 679-4 (Building A) on June 16, 1977?

Answer in Dollars and Cents:

We, the jury, answer $20,750.

Question No. 2

From a preponderance of the evidence, what do you find was the market value of Defendants' property at 1164 E. Commerce, known as Parcel No. 679-7 Buildings B & C), on June 16, 1977?

Answer in Dollars and Cents:

We the jury, answer $57,500.00.

That said verdict of the jury was duly signed only by the Foreman thereof DENNIS R. FRIEDRICKS, since the verdict was unanimous, and that said verdict was received by the Judge of this Court on December 21, 1978 in the presence of counsel for Plaintiff and Defendants. That said verdict was in all things regular and lawful and that upon request of Defendants' counsel, the jury was polled by the Judge of this Court concerning their verdict and each and every juror answered that the verdict as read was in truth their own individual verdict.

It is therefore, ORDERED, ADJUDGED and DECREED,

that the Plaintiff, URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, do have and recover of and from Defendants the following described property and receive fee simple title on same:

1. From Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER, the following described property located in the City of San Antonio, Bexar County, Texas:

   The West ½ of Lot 3, Block 1, New City Block 679; VOL. 297A PAGE 361

2. From the Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER, the following described property located in the City of San Antonio, Bexar County, Texas:

   Fully described on Exhibit "A" Attached hereto.

It is further ORDERED, ADJUDGED and DECREED that the following Defendants recover of the URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, the following amounts:

1. Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER the total sum of $20,750.00 as total compensation for the taking of the property known as Parcel No. 679-4 herein described;

and it further appearing to the Court that Plaintiff, URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, has heretofore on June 16, 1977, deposited the sum of $20,000.00 into the Registry of the County Court at Law Number Six, which is the amount of the award of the Special Commissioners herein for Parcel 679-4 owned by the above Defendants, and that the difference between the amount of such award and the amount of this Judgment is the sum of $750.00;

It is therefore, ORDERED, ADJUDGED and DECREED that Defendants JOSE F. OLIVARES, NANCY OLIVARES

and the Estate of GEORGE W. WARNER, should and do hereby have and recover from Plaintiff the additional sum of $750.00, together with interest thereon at the rate of nine percent (9%) per annum from June 16, 1977 until the date of this Judgment, all of which sum shall run with interest thereon at the rate of nine percent per annum from the date of this Judgment until paid; and that Plaintiff pay such sum, together with interest thereon as heretofore ORDERED, into the Registry of the County Court at Law Number Six through the County Clerk of the Bexar County, Texas, in satisfaction of this Judgment;

2. Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER do have and recover from Plaintiff the Total sum of $57,500.00 for the Defendants' property known as Parcel 679-7 herein described;

and it appearing to this Court that the Plaintiff has heretofore on July 16, 1977, deposited the sum of $57,500.00 into the Registry of the County Court at Law Number Six, which is the amount of the award of the Special Commissioners herein, and that the difference between said amount and the amount of this Judgment is the sum of zero ($0);

It is, therefore, ORDERED, ADJUDGED and DECREED, that Defendants JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER, recover from Plaintiff the additional sum of zero dollars ($0) for Parcel 679-7;

It is further ORDERED, ADJUDGED and DECREED, that the Taxing Agencies of the CITY OF SAN ANTONIO, STATE OF TEXAS, COUNTYU OF BEXAR, and SAN ANTONIO INDEPENDENT SCHOOL DISTRICT are entitled to certain sums for current taxes and that said sums be paid out of the Judgment rendered herein;

It is further ORDERED, ADJUDGED and DECREED, that the above stated sums be paid by the District Clerk of

Bexar County, Texas, to the above named taxing agencies upon proper application therefore as their interests may appear;

It is further ORDERED, ADJUDGED and DECREED, that any sums to be paid to the above named lienholders and/or claimants shall be paid by the District Clerk of Bexar County, Texas, to said parties upon the submission of a proper application therefore as their interests may appear;

The Court found that the interests of the owners and claimants were incapable of prompt and accurate ascertainment and would have entailed a substantial delay in the proceedings.

It is, therefore, ORDERED, ADJUDGED and DECREED, that the vol 297A page362 Plaintiff, make a general award of the additional sum of Seven Hundred & Fifty Dollars and NO/100 Cents ($750.00) plus accrued interest thereon in lump sum and depositing said sum in the Registry of the Court of County Court at Law No. 6 subject to the interests of the owners and claimants of the property; said interests to be later disposed of in a proper Motion for Adjudication To Question of Title.

It is further ORDERED, ADJUDGED and DECREED, that all costs of Court be and hereby are adjudged against the URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, which costs shall be paid to the District Clerk of Bexar County, Texas.

The Defendants, NANCY OLIVARES through her Attorney and JOSE F. OLIVARES except to this Judgment.

This Judgment is SIGNED, ORDERED and ENTERED of record on the 16 day of February, 1979.

"s/ Alfonso Chapa"
ALFONSO CHAPA, Judge Presiding
225TH Judicial District
Bexar County, Texas

APPROVED:
HARDBERGER & HERRERA, INC.
115 Villita Street

NO. 77-CI-17935

URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO	) IN THE DISTRICT COURT
VS	) 225th JUDICIAL DISTRICT
JOSE F. OLIVARES, ET AL	) BEXAR COUNTY, TEXAS

MOTION FOR JUDGMENT ON THE JURY VERDICT

TO THE HONORABLE JOHN J. SPECIA, JR.;

Now come Jose Olivares and wife, Nancy Olivares, Defendants in the foregoing cause, and Motion the Court for Judgment on the Jury Verdict, and for such Motion, will respectfully show the Court the following:

I.

A conference was held with Jeffrey T. Cullinane, an Attorney for the Birdie L. Nix Trust, Intervener, on July 23rd, 2002, on the substance of this motion. We were not able to agree; therefore, the matter is presented to the Court for determination.

II.

The Final Judgment Nunc Pro Tunc signed on February 16, 1979, is, in fact and law, an interlocutory judgment and not a final judgment. The judgment does not dispose of all parties and leaves issues for future determination. It leaves issues that should have been passed upon by the jury and not having been passed upon, they should be denied.

III.

This case was tried by jury and the jury has returned a verdict which has been accepted. Attached hereto is a proposed judgment. The difference between this judgment and the prior interlocutory judgment is this judgment denies relief to the taxing agencies and lienholders, they have not appeared for jury trial and submitted no jury issues; and the receipt of the award by the jury to the Defendants is unconditional, making this a final judgment and in conformity with the jury verdict.

Wherefore, Movants ask the Court to render judgment upon the jury verdict and for such other relief they may be entitled

"s/Pepos S. Dounson"
Pepos S. Dounson
914 W. Mistletoe Avenue
San Antonio, Texas 78201
Area 210 733-1377
State Bar Id No. 06056000
ATTORNEY FOR DEFENDANTS

VERIFICATION

Before me, the undersigned authority, a Notary Public, on this day personally appeared Jose Olivares and Nancy Olivares Relators, who being first duly sworn by me deposed and said:

We are the Movants in the foregoing Motion. We are each over 21 years of age and each are competent to make this affidavit. We each have read the foregoing Motion for Judgment on the Jury Verdict, and every factual statement Contained in the motion is within my personal knowledge and is true and correct.

"s/ Jose Olivares"
Jose Olivares
"s/Nancy Olivares"

Subscribed and sworn to before me by said Jose Olivares and Nancy Olivares this 24th day of July, 2002, to certify which witness my hand and seal office.

"s/Jo Landa"

seal:

JO LANDA
Notary Public
STATE OF TEXAS
My comm.. Exp. 03-29-2008

FIAT

The foregoing Motion for Judgment on the Jury Verdict having been presented to the Court and it appearing that a hearing should be had thereon, the foregoing Motion for Judgment on the Jury Verdict is hereby set for hearing on July 31st, 2002, at 8:30 o'clock a.m. before the Presiding Judge of the 225th District Court at its regular place of sitting in the Bexar County Texas Court House.
Signed July 24th, 2002.

JUDGE JOHN J. SPECIA, JR.

_____
Judge Presiding

CERTIFICATE OF SERVICE

This certifies that the undersigned served this Motion for Judgment on the Jury Verdict on Real Party in Interest, by sending a copy thereof by certified mail, return receipt requested, to Lawrence L. Garcia, 257 E. Hildebrand, San Antonio, TX 78212, attorney for the Estate of George W. Warner, to San Antonio Development Agency (Urban Renewal Agency for the City of San Antonio, 1400 S. Flores St. , San Antonio, TX 78204, to Linebarger, Goggan, Blair, Pena & Sampson LLP, 711 Navarro, Suite 300, San Antonio, TX 78205, Attorneys for the City of San Antonio, Bexar County Tax Collector and San Antonio Independent School District, to Porter Poultry & Egg Company, Inc. To 5475 Highway 90 Expressway, San Antonio, TX 78227, to Oppenheimer, Blend, Harrison & Tate Inc, ATTN: Cathy R. Turcotte, 711 Navarro, Suite 600, San Antonio, TX 78205, Attorneys for the Birdie L. Nix Trust, to Leif Zars, 438 Sandau Road, San Antonio, TX 78216, also at 304 Devonshire Dr., San Antonio, TX 78209, to Tuck R. Chapin, 12011 Bammel Lane, San Antonio, TX 78201 to Polunsky's 1224 N. Flores Street, San Antonio, TX 78201, and to Jack M. Partain, 300 Convent, Suite 2200, San Antonio, TX 78207, Attorney for Central Distributing Company, on July 24th, 2002.

"s/Pepos S. Dounson"
Pepos S. Dounson Bar Id 06056000

Attorney at Law
914 West Misstletoe Avenue
San Antonio, Texas 78201-5649
Area 210 733-1377
Attorney for Nancy Olivares and
Jose Olivares

NO. 77-CI-17935

URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO	) IN THE DISTRICT COURT
VS	) 225th JUDICIAL DISTRICT
JOSE F. OLIVARES, ET AL	) BEXAR COUNTY, TEXAS

JUDGMENT

On the 4th day of December, 1978, came on to be heard and considered the above entitled and numbered Cause in which the URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO is Plaintiff and is represented by its Attorneys of Record and the Defendants are: Owners and Claimants, JOSE F. OLIVARES, appearing pro se, NANCY OLIVARES, appearing through her legal attorney, and the Estate of GEORGE W. WARNER, appearing through its legal representative, the Taxing Agencies of the CITY OF SAN ANTONIO, STATE OF TEXAS, COUNTY OF BESAR and SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, and alleged Lienholders, Porter Poultry and Egg Company, Birdie L. Nix Trust, Service Finance Corporation, doing business as Commercial Equipment leasing Company, Leif Zars, Central Distributing Company, Tuck R. Chapin and John M. O'Connell, all lienholders were notified of the trial but selected not to make an appearance; all the parties who made their appearance did so for all purposes and announced ready for trial; and the Defendants having

demanded a jury trial, a jury of twelve (12) lawful jurors was then impaneled on December 12, 1978.

The Plaintiff then proceeded to introduce evidence on the issue of its right to take the property and after presenting said evidence the Court found as follows: (1) That the Plaintiff followed the proper procedure as prescribed by law; (2) That all prerequisites of jurisdiction had been complied with by Plaintiff in the condemnation of the property described herein; (3) That Plaintiff was entitled to condemn said property and had complied with the requirements of the laws concerning said condemnation; (4 That the Plaintiff did have the right to take the property described herein; (5) That Plaintiff had complied with the other prerequisites for the use of the power of eminent domain by having heretofore filed a proceeding with the County Court at Law Number Six who thereafter appointed three (3) Special Commissioners to determine the matter herein in condemnation as ;provided by law; and said Commissioners having taken their oath, duly qualified after appointment, and designated a time and place for the hearing and the issuance of process, and that subsequently on June 13, 1977, said Commissioners held a hearing and thereafter awarded the following sums:

(A) In connection with Parcel 679-4 owned by Jose F. Olivares, Nancy Olivares and the Estate of George W. Warner- $20,000.00;

(B) In connection with Parcel 679-7, owned by Jose F. Olivares, Nancy Olivares and the Estate of George W. Warner- $57,500.00.

Objections to said awards were duly and timely filed within the provisions of the laws of the State of Texas by the Defendants.

After making the findings above concerning the right of Plaintiff to take the property described herein, the Court then proceeded with the trial on December 13, 1978, on the sole issue of the market value of the two properties; the attorney for Nancy Olivares presented his evidence, entered his exhibits, called his witnesses and presented their testimony,

and having presented the foregoing rested and closed; the Estate of Warner presented no evidence and thus rested and closed; Mr. Jose F. Olivares presented no evidence, entered no exhibits and called no witnesses in regards to establishing and proving any leasehold interest he might have in the properties and hence rested and closed thus getting a default on same; the Plaintiff presented its evidence, entered its exhibits, called its witnesses and presented their testimony, and after having presented the foregoing rested and closed; the attorney for Defendant Nancy Olivares presented evidence and testimony on rebuttal; accordingly, after the presentations of evidence, the entry of exhibits, the close of the testimony, and argument by counsel for Plaintiff and Defendant, Nancy Olivares, the Estate of George W. Warner presented no final argument the jury was submitted the Court's Charge inquiring as to the following two (2) questions and the jury answered said questions as follows:

Question No. 1

From a preponderance of the evidence, what do you find was the market value of Defendants' property at 1154 E. Commerce, known as Parcel No. 679-4 (Building A) on June 16, 1977?
Answer in Dollars and Cents:
We, the jury, answer **$20,750.**

Question No. 2

From a preponderance of the evidence, what do you find was the market value of Defendants' property at 1164 E. Commerce, known as Parcel No. 679-7 Buildings B & C), on June 16, 1977?
Answer in Dollars and Cents:
We the jury, answer **$57,500.00.**

That said verdict of the jury was duly signed only by the Foreman thereof DENNIS R. FRIEDRICKS, since the verdict was unanimous, and that said verdict was received by the Judge of this Court on December 21, 1978 in the presence of counsel for Plaintiff and Defendants. That said verdict was in all things regular and lawful and that upon request of Defendants' counsel, the jury was polled by the Judge of this

Court concerning their verdict and each and every juror answered that the verdict as read was in truth their own individual verdict.

It is therefore, ORDERED, ADJUDGED and DECREED, that the Plaintiff, URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, do have and recover of and from Defendants the following described property and receive fee simple title on same:

1. From Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER, the following described property located in the City of San Antonio, Bexar County, Texas:
   The West ½ of Lot 3, Block 1, New City Block 679;
2. From the Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER, the following described property located in the City of San Antonio, Bexar County, Texas:

   Fully described on Exhibit "A"
   Attached hereto.

It is further ORDERED, ADJUDGED and DECREED that the following Defendants recover of the URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, the following amounts:

1. Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER the total sum of $20,750.00 as total compensation for the taking of the property known as Parcel No. 679-4 herein described;

And it further appearing to the Court that Plaintiff, URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO, has heretofore on June 16, 1977, deposited the sum of $20,000.00 into the Registry of the County Court at Law Number Six, which is the amount of the award of the Special Commissioners herein for Parcel 679-4 owned by the above Defendants, and that the difference between the amount of such award and the amount of this Judgment is the sum of $750.00;

It is therefore, ORDERED, ADJUDGED and DECREED that Defendants JOSE F. OLIVARES, NANCY OLIVARES and the Estate of GEORGE W. WARNER, should and do hereby have and recover from Plaintiff the additional sum of $750.00, together with interest thereon at the rate of nine percent (9%) per annum from the date of this judgment until paid; and that Plaintiff pay such sums together with interest thereon as heretofore **ORDERED,** into the Registry of the County Court at Law Number Six through the County Clerk of Bexar County, Texas, in satisfaction of this judgment.

2. Defendants, JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER do have and recover from Plaintiff the Total sum of $57,500.00 for the Defendants'

property known as Parcel 679-7 herein described;

And it appearing to this Court that the Plaintiff has heretofore on July 16, 1977, deposited the sum of $57,500.00 into the Registry of the County Court at Law Number Six, which is the amount of the award of the Special Commissioners herein, and that the difference between said amount and the amount of this Judgment is the sum of zero ($0);

It is, therefore, ORDERED, ADJUDGED and DECREED, that Defendants JOSE F. OLIVARES, NANCY OLIVARES, and the Estate of GEORGE W. WARNER, recover from Plaintiff the additional sum of zero dollars ($0) for Parcel 679-7;

It is therefore, ORDERED, ADJUDGED and DECREED, that the Plaintiff, make a general award of the additional sum of Seven Hundred & Fifty Dollars and No/100 Cents ($750.00) plus accrued interest therefrom in lump sum and depositing said sum in the Registry of the County Court at Law Number Six subject to the interest of the owners.

It is further ORDERED, ADJUDGED and DECREED, that all costs of Court be and hereby are adjudged against the URBAN RENEWAL AGENCY OF THE CITY OF SAN

ANTONIO, which costs shall be paid to the District Clerk of Bexar County, Texas.

; IT IS FURTHER ORDERED, ADJUDGED and DECREED, by the Court that all relief not granted herein is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Final Judgment Nunc Pro Tunc herein signed February 16, 1979 is hereby set aside.

Signed this ____day of July, 2002.

_____

Judge Presiding

NO. 77-CI-17935

URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO	) IN THE DISTRICT COURT
VS	) 225th JUDICIAL DISTRICT
JOSE F. OLIVARES, ET AL	) BEXAR COUNTY, TEXAS

ORDER ON MOTION FOR JUDGMENT ON THE JURY VERDICT

On this 31st day of July, 2002, came on to be heard the Motion for Judgment on the Jury Verdict by the Defendants Jose Olivares and wife, Nancy Olivares, and the Court proceeded to hear the argument of counsel, and after due consideration, finds that such Motion should be "s/Denied";

It is therefore ordered that the Motion for Judgment on the jury Verdict filed "s/JL." By the Defendants Jose Olivares and wife, Nancy Olivares, on July 31, 2002, is hereby Denied.

Signed this 31st day of July, 2002.

"s/Janet P. Littlejohn "

JUDGE PRESIDING

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CERTIFIED COPY CERTIFICATE STATE OF TEXAS I, REAGAN E. GREER BEXAR COUNTY DISTRICT CLERK CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD AS INDICATED BY THE VOLUME, PAGE AND COURT ON SAID DOCUMENT. WITNESS MY OFFICIAL HAND AND SEAL OF OFFICE THIS AUG 5, 2002
REAGAN E. GREER BEXAR COUNTY, TEXAS
BY: "s/ Consuelo E. Gomez DEPUTY
COUNSUELO E. GOMEZ

COURT OF APPEALS
FOURTH COURT OF APPEALS DISTRICT OF TEXAS
SAN ANTONIO
THE STATE OF TEXAS
October 8, 2002
No. 04-02-00607-CV
IN RE Jose F. **OLIVARES** and Nancy C. Olivares
Original Proceeding
From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. No. 77-CI-17935
Honorable Janet Littlejohn, Judge Presiding

ORDER

In accordance with this court's opinion to be issued at a later date, relator's petition for writ of mandamus is DENIED. TEX. R. APP. P. 52.8(a).

It is so **ORDERED** on October 8, 2002.

"s/Karen Angelini"
Karen Angelini, Justice

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 8th day of October, 2002.

"s/Herb Schaefer"
Herb Schaefer, Clerk

Seal: *COURT OF APPEALS*
STATE OF TEXAS

NO. 77-CI-17935

URBAN RENEWAL AGENCY OF THE CITY OF SAN ANTONIO	§ IN THE DISTRICT COURT § §
VS	§ 225th JUDICIAL DISTRICT
JOSE F. OLIVARES, ET AL	§ § BEXAR COUNTY, TEXAS

FINAL JUDGMENT

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On July 15, 2002, this case was called for a non-jury trial on Defendants':

- Motion to Strike Intervention of Birdie L. Nix Trust;
- Motion For Adjudication To Questions of Title;
- Objection to Trial and Hearing; and
- Motion For Correction of Court's Trial Severance After Jury Submission.

Defendants, Jose F. Olivares and his wife, Nancy C. Olivares, appeared in person and through their attorney and announced ready for trial. Defendant-in-Intervention, Birdie L. Nix Trust, appeared through its representative, Mr. Bill Clyborne, and through its attorney and announced ready for trial.

All matters in controversy, legal and factual, were submitted to the court for its determination concerning Defendants' Motion To Strike Intervention, Motion For Adjudication Of Title, Written Objection to Trial and Hearing and Motion For Correction of Court's Trial Severance After Jury Submission. The court heard the evidence and arguments of counsel and at the close of Defendants'' case in chief granted Defendant-in-Intervention's Motion For Judgment. Defendants, Jose F. Olivares and Nancy C. Olivares, did not move to reopen their case in chief so as to present additional evidence.

The court orally RENDERED judgment for Defendant-in-Intervention Birdie L. Nix Trust on Tuesday, July 16, 2002. An Interlocutory Judgment was signed by Judge Littlejohn on July 31, 2002, which ordered as follows:

1. That Defendant-in-Intervention, Birdie L. Nix Trust, is a proper party in intervention in this matter;
2. That Defendants', Jose F. Olivares and Nancy C. Olivares, Motion To Strike Intervention of Birdie L. Nix Trust is DENIED;
3. that Defendants', Jose F. Olivares and Nancy C. Olivares, Motion For Adjudication Of Title is DENIED;
4. That Defendants', Jose F. Olivares and Nancy C. Olivares, Objection to Trial and Hearing is DENIED;
5. That Defendants', Jose F. Olivares and Nancy C. Olivares, Motion For Correction of Court's Trial Severance After Jury Submission is DENIED;
6. That Defendants, Jose F. Olivares and Nancy C. Olivares, take nothing by their suit;
7. That Defendants', Jose F. Olivares and Nancy C. Olivares, Motion To Sever this Interlocutory Judgment is DENIED;
8. that Defendant-in-Intervention, Birdie L. Nix Trust's Motion for Continuance on its Amended Motion For Payment is in all things GRANTED.

On September 16, 2002, this case was called for a non-jury trial on Defendant-in-Intervention's Amended Motion For Payment of Judgment. Defendants, Jose F. Olivares and his wife, Nancy C. Olivares, appeared through their attorney.

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Defendant-in-Intervention, Birdie L. Nix Trust, appeared through its representative, Mr. John Robb, and through its attorney and announced ready for trial.

All matters in controversy, legal and factual, were submitted to the court for its determination concerning Defendant-in-Intervention's Amended Motion For Payment of Judgment. The court heard the evidence and arguments of counsel on September 20, 2002 and October 1, 2002 and at the close of evidence is of the opinion that Defendant-in-Intervention's, Birdie L. Nix Trust, Motion For Payment is

entitled to recover from Jose F. Olivares and Nancy C. Olivares. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Jose F. Olivares was the legal owner of three (3) tracts of land[1] at issue in this matter prior to the Judgment taken by the Birdie L. Nix Trust Against Jose F. Olivares on November 24, 1976.
2. The Birdie L. Nix Trust's Abstract of Judgment which was filed on March 15, 1976 constituted a valid judgment lien against the three(3) tracts of land owned solely by Jose F. Olivares and subject of the condemnation sit initiated by the Urban Renewal Agency of the City of San Antonio in Cause No. 77-CI-17935.
3. Jose F. Olivares continued to be the legal owner of the three (3) tracts of land at issue in this matter at the time Judge Alonso Chapa commenced and concluded trial in December 1978 in Cause No.l 77-CI-17935 wherein the condemnation and market

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value of the three (3) tracts of land was established.

4. The March 15, 1976 abstract of judgment filed by the Birdie L. Nix Trust is superior to any interest that may be held by Jose F. Olivares, George Warner, the Estate of George Warner, and Nancy Olivares in the three (3) tracts of land because any alleged attempt to transfer legal title out of Jose F.Olivares to any third party was not properly recorded in the real property records.
5.

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[1] Three tracts of land are described as follows:

a. A Tract of land being 30' across West side of Lot four (4), Block 1, New City Block 679
b. A Tract of land being West ½ of Lot three(3)(A-23), New City Block 679; and
c. A Tract of land being the North 111.5 feet of the East 38.15 feet of Lot four(4), Block one (1), News City Block 679.

6. The Birdie L. Nix Trust presented evidence regarding the record lienholders of Jose F. Olivares and his father, Joe Olivares, as they relate to the three (3) tracts of land prior to the December 1978 condemnation trial by the Urban Renewal Agency. Based upon this evidence the court found that only two lienholders, Porter Poultry and Central Distributing, have priority over the Birdie L. Nix Trust's March 15, 1976 abstract of judgment. However, after having received notice of the Birdie L. Nix Trust's hearing on its Motion for Payment, Porter Poultry did not appear to present any claim and thereby defaulted on their claim as a prior lienholder as to the Birdie L. Nix Trust. Due to Porter Poultry's default, no deduction will be made from the funds held in the registry of the court for the payment of Porter Poultry's lien.
7. The Birdie L. Nix Trust presented evidence and the Court found that the current amount of condemnation proceeds held in the registry of the court[2](at International Bank of Commerce, Account no. 36048-00) as of September 13, 2002 is $71,674.63. From these proceeds Central Distributing is to be paid to satisfy its outstanding judgment lien and accrued post judgment interest which as of September 13, 2002 amounted to $485.70. From the remaining balance of $71,188.93 the Birdie L. Nix Trust is to be paid immediately to satisfy its outstanding judgment lien and accrued post judgment interest which as of September 13,

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[2] On June 30, 1993, Honorable Polly Jackson Spencer ordered the condemnation proceeds held in the registry of the court be placed in an interest bearing account until final disposition. Said funds were subsequently deposited by Robert D. Green, Bexar County Clerk, as Trustee of the account, with International Bank of Commerce, 130 East Travis Street, San Antonio, Texas 78205 where they remain today in account/customer no. 36048-00.

8. 2002 amounted $54,671.21 resulting in a remaining balance of $16,517.72.
9. IT IS FURTHER ORDERED THAT the Birdie L. Nix Trust recover from Jose F. Olivares and Nancy C. Olivares attorney's fees in the sum of $43,167.00 for services rendered through the trial of this case. The attorney fees are found by the Court to be reasonable and necessary considering the work done to pursue satisfaction of the Birdie L. Nix Trust lien and taking into consideration other factors for the award of attorneys fees. The Birdie L. Nix Trust is awarded and is to be immediately paid the remaining balance of $16,517.72 held in the registry of the court as partial satisfaction of its award of attorney fees and costs.
10. IT IS FURTHER ORDERED THAT in the event of an appeal by either Jose F. Olivares and or Nancy C. Olivares to the court of appeals, if the appeal is unsuccessful, the Birdie L. Nix Trust will be further entitled to $20,000.00 as a reasonable attorney's fee; in the event of an appeal by Jose F. Olivares and or Nancy Olivares to the Supreme Court of Texas, if the appeal is unsuccessful, the Birdie L. Nix Trust will be entitled to an additional $15,000.00.
11. IT IS FURTHER ORDERED THAT the total amount of the judgment here rendered will bear interest at the rate of 6% percent from October 1, 2002 until paid.
12. All costs of court spent or incurred in this cause are adjudged against Jose F. Olivares and Nancy C. Olivares.
13. All writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary.
14. IT IS FURTHER ORDERED THAT the following matters are hereby severed from Cause No. 77-CI-

17935 so that these matters may become final with this judgment:

- Intervention by the Birdie L. Nix Trust;
- Motion to Strike Intervention of Birdie L. Nix Trust filed by Jose F. Olivares and Nancy C. Olivares;
- Motion For Adjudication To Question of Title filed by Jose F. Olivares and Nancy C. Olivares;
- Objection to Trial and Hearing filed by Jose F. Olivares and Nancy C. Olivares; and
- Amended Motion for Payment filed by the Birdie L. Nix Trust.

15. All relief requested in this case and not expressly granted is denied. This judgment finally disposes of all claims between Jose F. Olivares, Nancy C. Olivares and Birdie L. Nix Trust and is appealable.
16. The Interlocutory Judgment previously rendered on July 31, 2002 is hereby merged with the Judgment rendered herein pursuant to Defendant-in-Intervention's Amended Motion For Payment of Judgment. The two Judgments merged together herein constitute a Final Judgment in this case and is appealable.
17. Mr. Dounson, counsel for Jose and Nancy Olivares excepted to the judgment.

SIGNED on October 11, 2002

"s/Janet P. Littlejohn"
HONORABLE JANET P. LITTLEJOHN
150th JUDICIAL DISTRICT COURT

APPROVED AS TO FORM:
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BY: "s/Pepos S. Dounson"
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BY: "s/ Jeffrey T. Cullinane"
Cathy Raba Turcotte
State Bar No. 20296450
Jeffrey T. Cullinane
State Bar No. 24032104
ATTORNEYS FOR INTERVENOR
BIRDIE L. NIX TRUST

CERTIFIED COPY CERTIFICATE STATE OF TEXAS
I REAGAN E. GREER, BEXAR COUNTY DISTRICT CLERK, CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL RECORD AS INDICTED BY THE VOLUME, PAGE AND COURT ON SAID DOCUMENT
WITNESS MY OFFICIAL HAND AND SEAL OF OFFICE
THIS OCT 11, 2002
REAGAN E. GREER
BEXAR COUNTY, TEXAS
BY: "s/Yvette Gonzales"
"s/Yvette Gonzales"

COURT OF APPEALS
FOURTH COURT OF APPEALS DISTRICT OF TEXAS
SAN ANTONIO
THE STATE OF TEXAS

OPINION

No. 04-02-00942-CV

Jose F. **OLIVARES** and Nancy C. Olivares, Individually and as Trustee,
Appellants

v.

BIRDIE L. NIX TRUST,
Appellee

From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. No. 77-CI-17935
Honorable Janet P. Littlejohn, Judge Presiding

Opinion by: Alma L. López, Chief Justice
Sitting: Alma L. López, Justice
Sandee Bryan Marion, Justice
Phylis J. Speedlin, Justice

Delivered and Filed: November 5, 2003

AFFIRMED

This appeal is from the grant of the Birdie Nix Trust ("BNT") Motion to Pay Judgment, under which the trial court ordered payment to BNT, as lienholder, from condemnation proceeds deposited in the registry of the court. The Olivareses present four issues on appeal: (1) whether Jose Olivares owned the property at the time BNT recorded its abstract of judgment; (2) whether the abstract of judgment substantially complied with the mandatory requirements to make it a valid and effective judgment lien; (3) whether BNT's judgment was dormant and barred by limitations when a writ of execution had issued on January 23, 1976, and no other writ was issued within 10 years; and

(4) whether the trial court erred in denying the motion for adjudication of title of Nancy Olivares. We affirm the trial court's judgment.

BACKGROUND

Between 1966 and 1969, Jose F. Olivares ("Jose Olivares") acquired title to three properties near downtown San Antonio[1] Tract 2 was encumbered by a recorded Vendor's lien and recorded deed of trust dated May 16, 1966, which secured a note payable to Ed Steves & Sons, Inc. ("Steves"), the prior owner. No release or transfer of these liens was ever recorded.

On November 24, 1975, BNT obtained a judgment against Jose Olivares and his father, Joe Olivares, Sr., in the amount of $20,921.45. BNT abstracted, recorded, and indexed the judgment in the Bexar County Real Property Records on March 15, 1976 in order to secure a judgment lien. The judgment lien attached to all property in Bexar County owned by Jose Olivares and his father.

On December 2, 1975, eight days after the BNT judgment was rendered, three non-judicial foreclosures were conducted, and the three tracts were auctioned to George Warner. On January 5, 1976, three substitute trustee deeds were filed as a record of these sales. According to the recitals in the substitute trustee deeds, Warner was also the foreclosing lienholder on these properties at the time of sale. However, the foreclosed deeds of trust held by Warner on Tracts 1,2, and 3 were not recorded, and the alleged transfer of assignment to Warner of Steves's deed of trust on Tract 2

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[1] The properties will be referred to as Tracts 1,2, and 3. The three tracts are distinguishable by the first line of their legal descriptions, which begin as follows:
Tract 1. "A tract of land being 30' across West side of Lot 4, Block 1, New City Block 679";
Tract 2. A tract of land being the "North 111.5 feet of the East 38.15 feet of Lot four (4), Block one (1), New City Block 679"; and
Tract 3. A tract of land being the "West ½ of lot 3 (A-23), New City Block 679, in the City of San Antonio, Bexar County, Texas."

was also not recorded. Warner and his wife conveyed the three tracts to Nancy Carroll Olivares ("Nancy Olivares"), trustee[2], who is Warner's stepdaughter and Jose Olivares's wife, in a warranty deed dated July 1, 1976 and recorded September 19, 1978.

On December 31, 1977, The Urban Renewal Agency of the City of San Antonio commenced condemnation proceedings against Jose Olivares on the three tracts of land, and an award based on the value of the property was deposited into the registry of the court. Jose Olivares, Nancy Olivares, and the Estate of George Warner appeared as owners and claimants. Seven lienholders asserted security interests in the properties at the time of condemnation. BNT filed a Plea in Intervention in the condemnation proceedings and sought to secure the proceeds in payment of its judgment lien. An appeal was made regarding the amount of the award, and the cause was transferred to the district court.

On February 16, 1979, a jury verdict concerning the value of the property was entered into judgment by the district court, and the increase in value was ordered deposited into the registry. Since the interest of each of the owners and claimants was not readily ascertainable, the court ordered lienholders to be paid by the district court upon proper application for withdrawal. The nature of these interests were to be later determined in a proper Motion for Adjudication To Question Title. The determination of the priority of title and the payment of the condemnation proceeds sat dormant until March 27, 2002, when Nancy Olivares filed an Application for Withdrawal of Funds from the registry in Probate Court No. 1. The probate court efused to rule on the application, and on April 3, 2002, Nancy Olivares filed a Motion for Adjudication To Question

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[2] Mrs. Olivares is allegedly a trustee for a trust created for her son. No documentation evidencing this trust is in the record.

of Title in the 225th Judicial District Court. On July 9, 2002, BNT filed a Motion for Payment of Judgment. Based on its findings[3], the trial court denied Olivares's motion, and ordered payment to BNT on its judgment lien, accrued interest, and attorneys fees.

LEGAL OWNERSHIP WHEN BNT'S ABSTRACT OF JUDGMENT WAS RECORDED

In their first issue on appeal, the Olivareses attack BNT'S entitlement to condemnation funds on the grounds that BNT'S judgment lien could not attach to the three properties. The Olivareses contend that Jose Olivares did not own the three parcels of real property when, on March 16, 1976, BNT recorded its Abstract of Judgment, and as such, BNT did not have a valid lien on the property or entitlement to condemnation proceeds.

The Olivareses contend that legal title was transferred from Jose Olivares to Warner through three substitute trustee deeds. These deeds purport to convey property to Warner in a foreclosure sale and the filing of the substitute trustee deeds occurred before March 15, 1976, when BNT recorded its abstract of judgment. However, there are no deeds of trust or appointments of substitute trustees on record to provide authority for the execution of the substitute trustee deeds.

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[3] The trial court found:
1)Jose Olivares was the legal owner of the three tracts when BNT obtained its judgment;
2)BNT's Abstract of Judgment constituted a valid judgment lien against the three tracts;
3) Jose Olivares continued to be the legal owner of the three tracts when the district court established the condemnation and market value of the three tracts; and
4) BNT's abstract of judgment was superior to any interest held by Jose Olivares, Nancy Olivares, George Warner, or the Estate of George Warner because the alleged transfer of legal title out of Jose Olivares was not properly recorded.

A deed of trust does not pass legal title, but only equitable title. Farm Credit Bank v. Snyder Nat'l Bank, 802 S.W.2d 709, 713 (Tex. App.-Eastland 1990, writ denied). In a deed of trust, the mortgagor conveys only the equitable title and retains the legal title, whereas a sale transfers legal title. Id. In executing the foreclosure deed, the trustee merely effects the transfer of legal title from the debtor to the foreclosure purchaser. Sandel v. Burney, 714 S.W.2d 40, 41 (Tex. App.-San Antonio 1986, no writ).

However, the power of a trustee to sell the property is derived solely from the deed of trust and can only be exercised in strict compliance with the note and conditions of sale. Bonilla v. Roberson, 918 S.W.2d 17, 21 (Tex. App.-Corpus Christi 1996, no writ). The trustee must pursue the terms of the trust instrument, the provisions of law relative to the sale, and the details prescribed as to the manner of the sale. Conversion Prop., L.L.C. v. Kessler, 994 S.W.2d 810, 813-14 (Tex. App.-Dallas 1999, pet. denied). In addition, a purchaser at a foreclosure sale obtains only that title which the trustee has authority to convey. Bonilla, 918 S.W.2d at 21 (citing Durkay v. Madco Oil Co., 862 S.W.2d 14, 17 (Tex.App.-Corpus Christi 1993, writ denied)). Where no deed of trust is recorded, the scope and existence of the trustee's purported authority of sale is unknown, and a subsequent purchaser is unable to determine what title, if any, the trustee has authority to convey. The same is true where the substitution of a trustee is unrecorded. Thus, a gap in the chain of title arises when the trustee executes a conveyance without recorded authority to do so. See University Sav.Ass'n v. Springwoods Shopping Ctr., 644 S.W. 2d 705, 706 (Tex. 1982) (stating that the failure to follow the terms of the deed of trust can give rise to an action to set aside the trustee's deed).

Similarly, in the context of a judicial sale, Texas courts have held that without proof of his power to sell, a sheriff's or constable's deed must be treated as a nullity. Atkinson v.

Daily, 238 S.W.2d 584, 587 (Tex. Civ. App.-Amarillo 1951, no writ) (citing Leland v. Wilson, 34 Tex.79 (1870). If the decree and the order of sale fail to authorize such a sale as the sheriff undertook to make, no title passes thereby. Id. (citing Trevino v. Fernandez, 13 Tex. 630 (1855)).

Here, the purported deeds of trust securing a lien in favor of Warner for Tracts 1 and 3 were not recorded nor were they produced at trial. Furthermore, the purported transfer of the Steves deed of trust for Tract 2 to Warner was neither recorded nor produced at trial. Because the three substitute trustee deeds were unsupported, legal title to the three tracts did not pass to Warner. Jose Olivares held legal title[4] to the three tracts both when BNT recorded its abstract of judgment and when the land was condemned.[5] The Olivareses' first issue is overruled.

STATUTORY COMPLIANCE OF BNT'S ABSTRACT OF JUDGMENT

In their second issue on appeal, the Olivareses contend that BNT's Abstract of Judgment did not substantially comply with the statutory mandatory requirements to make it a valid and effective judgment lien. Specifically, the appellants contend that BNT's Abstract of Judgment 1) failed to show the address of Jose Olivares in the record of the suit and 2) failed to show the address of Jose Olivares, the nature of the citation, and the date and place of service.

The purpose of an abstract of judgment is to create a lien against the debtor's property and to provide notice to subsequent purchasers and encumbrancers of the existence of the judgment and the lien. Citicorp Real Estate, Inc. v.

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[4] As legal title holder

[5] Additionally, the title insurance policy issued to the condemnor, the Urban Renewal Agency of the City of San Antonio, shows that record title was held by Jose Olivares on March 26, 1976. The title company properly noted that Warner would own Tract 2 only of both the appointment of A. Zamora as Substitute trustee and the transfer of Steves deed of trust to Warner were recorded.

Banque Arabe Internationale D'Investissement, 747 S.W.2d 926, 929 (Tex. App.-Dallas 1988, writ denied). It is well settled in Texas that it is the judgment creditor's responsibility to insure that the clerk abstracts the judgment properly. Caruso v. Shropshire, 954 S.W.2d 115, 116 (Tex.App.-San Antonio 1997, no pet.); Citicorp Real Estate, Inc., 747 S.W. 2d at 929; Tex. Am. Bank/Fort Worth, N.A. v. S. Union Exploration Co., 714 S.W.2d 105, 107 (Tex. App.-Eastland 1986, writ ref'd n.r.e.). Section 52.003 of the property code requires an abstract of judgment to contain the following seven elements:

(1) the names of the plaintiff and defendant;
(2) the birthdate and driver's license number of the defendant if available to the clerk or justice;
(3) the number of the suit in which the judgment was rendered;
(4) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;
(5) the date on which the judgment was rendered
(6) the amount for which the judgment was rendered and the balance due; and
(7) the rate of interest specified in the judgment.

TEX. PROP. CODE ANN.§ 52.003 (Vernon 1995).

Since a judgment lien is statutorily created, substantial compliance with the statutory requirements is mandatory before a judgment creditor's lien will attach. Caruso v. Shropshire, 954 S.W.2d at 116; Sarny Holdings, Ltd. V. Letsos, 896 S.W.2d 274, 276 (Tex. App.-Houston [1st Dist.] 1995, writ denied); Apostolic Church v. Am. Honda Motor Co. Inc., 833 S.W.2d 553, 554 (Tex. App.-Tyler 1992, writ denied); Citicorp Real Estate, Inc., 747 S.W.2d at 929. Substantial compliance allows only a minor deficiency in an element of the abstract as opposed to omitting a statutorily required element altogether. Id. At 930.

Section 52.003(4) requires the inclusion of the defendant's address, but provides in the alternative that "if the address is not shown in the suit, the nature of citation and the date and place of service of citation" are to be included. The conditional language triggering the alternative has not been addressed by Texas appellate courts. Most cases deal with the sufficiency of the provided address, such as Apostolic Church, 833 S.W. 2d at 554, or whole omissions of both the defendant's address and the citation information, such as Citicorp Real Estate Inc., 747 S.W.2d at 930. Here, BNT's abstract does not provide the defendant's address, but does provide citation information. Therefore, we must consider whether the conditional language that allows the use of citation information is limited to situations where the underlying suit reveals no address for the defendant. A fundamental rule of statutory construction is that a court should first ascertain the Legislature's intent in enacting the statute as expressed in its plain language. St. Luke's Episcopal Hosp. V. Agbor,952 S.W.2d 503, 505 (Tex. 1997). However, where an application of a statute's plain language leads to absurd results, courts do not enforce the statute under a literal interpretation. City of San Antonio v. Bullock, 34 S.W.3d 650, 655 (Tex. App.-San Antonio 2000, no pet.) (citing City of Amarillo v. Martin, 971 S.W.2d 426, 428 n.1 (Tex. 1998))

The birthdate and driver's license requirement is the only other requirement with conditional language. There the conditional phrase "if available to the clerk of the court" has been construed to mean "reasonably available to the clerk of the court." Fred Rizk Const. Co. v. Cousins Mortg. & Equity Investments, 627 S.W.2d 753, 756 (Tex. App.-Houston [1st Dist.] 1981, writ ref'd n.r.e.). Where the condition is met, the birthdate and driver's license are mandatory. However, this condition has not been construed to require the clerk of the court or the judgment creditor to take the deposition of the judgment debtor to obtain a

birthdate and driver's license number from the judgment debtor. Id.

The address requirement is slightly different. The statutory language makes the defendant's address mandatory. The conditional language provides an exception. The plain language of the statute applies the alternative requirement where the address of the defendant is "not shown in the suit." TEX. PROP.CODE ANN.§52.003(4) (Vernon 1995). Generally, in the legal context, "to show" means "to set forth." Under the statute, if the defendant's address it is not set forth in the suit, citation information may be used. The difficulty in this case is that two conflicting addresses were set forth.[6] However, the distinction between the two, designating the proper address for service, was not shown in the suit. Jose Olivares admitted that the address designation of his office changed, but there is no testimony that the second address was revealed as an updated address to BNT.

An abstract should be treated no differently where a defendant's address is not readily ascertainable from the underlying suit. Under such circumstances, citation information is sufficient to provide the requisite notice to third parties, thereby fulfilling the abstract's purpose in providing notice. Jose Olivares's and his father's addresses were not readily ascertainable because the documents in the underlying suit provided conflicting addresses. The Olivareses argue that BNT should have included either or both addresses in the abstract of judgment.

A creditor should not be left to decipher which address or how many addresses to include in the abstract of judgment, but should simply ensure that proper service is carried out and that the citation is sufficient to provide notice. Therefore, where the defendant's definitive address is not shown in the suit, the nature of citation and the date and place of service of citation provide substantial compliance

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[6] "The original petition indicates the address is 722 West Commerce while a subsequent affidavit indicates the address is 332 West Commerce.

with Section 52.003. TEX. PROP. CODE ANN.§52.003 (Vernon 1995). BNT's abstract identifies the nature of the citation (citation by service), the date of citation (July 23, 1969 on Joe Olivares, Sr. and July 24, 1969 on Jose Olivares) and the place of citation (Bexar County, Texas). Because BNT's abstract of judgment included all of the required citation information, the trial court correctly held that BNT substantially complied with the statute. The Olivareses' second issue is overruled.

DORMANCY AND LIMITATIONS ON BNT'S JUDGMENT

In their third issue on appeal, the Olivareses contend that BNT's judgment became dormant and barred by limitations when no writ had issued within 10 years from the last Writ of Execution, thereby depriving BNT of any interest in the condemnation proceeds. BNT counters that its interest in the condemnation proceeds vested during condemnation and is unaffected by the subsequent dormancy and limitations of the underlying judgment.

Under Texas law, a real property judgment lien comes into existence by the recording and indexing of an abstract of judgment, provided that the judgment supporting the abstract is not dormant. TEX PROP. CODE ANN.§52001 (Vernon 1995). The judgment lien continues for 10 years following the date of recording and indexing the abstract unless the judgment becomes dormant during that period. TEX. PROP. CODE ANN.§52.006 (Vernon 1995). A judgment is dormant if a writ of execution is not issued within 10 years after the rendition of a judgment or within 10 years after the issuance of the first writ. TEX. CIV. PRAC. & REM. CODE ANN.§34.001 (Vernon 1997). Once a judgment lien terminates by expiration of the ten-year period, it can never be extended. Burton Lingo Co. v. Warren, 45 S.W.2d 750, 752 (Tex. Civ. App.-Eastland 1931, writ ref'd).

The record is clear that BNT's judgment is now dormant. No writ of execution was issued within 10 years of its last

execution on January 23, 1976. TEX. PROP. CODE ANN.§ 52.001(B) (Vernon 1997). Thus, the judgment lien created by the abstract of judgment expired before the trial court ordered payment to BNT from the registry. However, *BNT's judgment lien was still in effect during the* condemnation proceedings and when the condemnation award was deposited into the registry in 1977. Therefore, we must consider the nature of BNT's interest in the condemnation award, and whether the subsequent dormancy of BNT's judgment affected that interest.

A party to a condemnation proceeding need not have been the actual holder of the tract's title to have a justiciable interest in the tract. Wynnewood Bank and Trust v. State, 767 S.W.2d 491, 493(Tex. App.-Dallas 1989, no writ) (citing Buell Realty Note Collection Trust v. Central Oak Inv. Co.,483 S.W.2d 24 (Tex. Civ. App.-Dallas 1972), writ ref'd n.r.e., 486 S.W.2d 87 (Tex. 1972) (per curiam)). It is sufficient that the party possessed a lien in the property at the time of the taking. Id. Once an award is made and the amount thereof is placed in the registry of the court to the order of the condemnees, and the land is occupied by the condemning authority, "the interest of each condemnee is established in and attaches to that fund as security for any possible damage suffered by reason of his dispossession." Fort Worth Concrete Co. v. State, 400 S.W. 2d 314, 317 (Tex. 1966) (addressing rights of landowner and lessee).

When a lienholder participates in a condemnation proceeding, he suffers no damage due to dispossession but instead due to the destruction of the lien itself. Compare Forth Worth Concrete Co., 400 SW. 2d at 317. "[W]here the whole of the mortgaged property is taken in eminent domain proceedings, the mortgagee is entitled to all of the award or so much of it as is necessary to satisfy the mortgage indebtedness." Buel Realty Note Collection Trust, 483 S.W. 2d at 26 (citing 27 AM.JUR.2D Eminent Domain§257 (1996). An impairment-of-security doctrine is, therefore, applicable in assessing a mortgagee's entitlement to

condemnation proceeds where there was a partial taking of the mortaged property. Buell Realty Note Collection Trust, 483 S. W.2d at 27 (holding that because there was no impairment, there was no entitlement to the proceeds). This doctrine suggests that the condemnation award is to be regarded as satisfaction of the mortgage indebtedness to the extent that the security interest has been impaired and the debt has become unsecured. Thus, when the condemnation proceeds were deposited, the interest of the condemnee lienholder vested in the condemnation proceeds as compensation for the destruction of the lien.

We recognize that a more recent case, however, states that when the condemnation proceeds are deposited, the "lien" of a mortgagee is "effectively transferred from the property into the deposit." Wynnewood Bank and Trust, 767 S.W.2d at 496. Nevertheless, the characterization of the condemnee's interest as a transferred lien in Wynnewood Bank and Trust is buried in the court's discussion of the condemnor's burdens and rights in condemnation. 767 S.W.2d at 496. This characterization is dicta, as the Wynnewood Bank and Trust court used the transferred lien characterization as a means of explaining that the condemnor's rights in the condemned property were not subject to the rights of lienholders who participated in the condemnation proceedings. Id. Furthermore, in support of this statement, the Wynnewood Bank and Trust court cites Fort Worth Concrete Co., 400 S.W.2d at 317. However, the Forth Worth Concrete Co. court did not characterize the nature of the condemnee's interest but instead addressed whether the dismissal of any or all of the condemnees would be improper and prejudicial after the condemnation proceeds had been deposited in the registry. 400 S.W.2d at 316. The court set aside the dismissal of a condemnee stating that the condemnee's interest had been "established in the attaches to [the condemnation] fund" and the "County Court had no authority to award any portion of the deposit...to the exclusion of [the condemnee] until there had been a final

determination of petitioner's compensable interest and damage, if any." Fort Worth Concrete Co., 400 S.W.2d at 317. Additionally, although the RESTATEMENT (Third) OF PROP.: MORTGAGES §4.7 cmt a (1997) notes that the condemnation proceeds are sometimes viewed as "substitute collateral" and that the mortgagee's claim on them is sometimes described as an "equitable lien," the only Texas case cited for this proposition is Wynnewood Bank and Trust. Id.

We believe the better approach to the issue is the one supported by Forth Worth Concrete Co. and Buell. We hold that the rights of each condemnee, in accordance with their priority in the property upon condemnation, vest in the condemnation proceeds upon condemnation. If a lienholder intervenes in a condemnation proceeding and the condemnation award is deposited into the registry of the court, the lienholder's right to the condemnation proceeds vest. The failure to take any additional action with regard to the judgment lien or the subsequent dormancy of the judgment supporting the judgment lien does not affect the rights that vested at the time of the condemnation proceedings. The Olivareses' third issue is overruled.

NANCY OLIVARES'S MOTION FOR ADJUDICATION OF TITLE

In their fourth issue on appeal, the Olivareses contend that the trial court erred in denying Nancy Olivares's Motion for Adjudication of Title because Nancy Olivares established title to the properties and the condemnations funds in the registry through an unbroken chain of title. The trial court properly found that Jose Olivares held legal title. The Olivares ' fourth issue is overruled.

CONCLUSION

The trial court's judgment is affirmed.

Alma L. López, Chief Justice

COURT OF APPEALS

FOURTH COURT OF APPEALS DISTRICT OF TEXAS

SAN ANTONIO

THE STATE OF TEXAS

J U D G M E N T

No. 04-02-00942-CV

Jose F. **OLIVARES** and Nancy C. Olivares, Individually and as Trustee,

Appellants

v.

BIRDIE L. NIX TRUST,

Appellee

From the 225th Judicial District Court, Bexar County, Texas

Trial Court No. No. 77-CI-17935

Honorable Janet P. Littlejohn, Judge Presiding

BEFORE CHIEF JUSTICE LÓPEZ, JUSTICE MARION AND JUSTICE SPEEDLIN

In accordance with this court's opinion of this date, the judgment of the trial court is **AFFIRMED.**

SIGNED November 5, 2003,

"s/Alma L. López"

Alma L. López, Chief Justice

ORDERS ON PETITIONS FOR REVIEW

THE FOR REHEARING FOLLOWING PETITIONS FOR REVIEW ARE DENIED

03-1055 NAOMI SHUNEEDA STERRETT v. GARY R. JACOBS, M.D., P.A., PHIL HAWNER, M.D., EAST TEXAS PLASTICSURGERY ASSOCIATES, L.L.P., AND COSMETIC SURGERY ASSOCIATION OF EAST TEXAS; from Gregg County; 6th district (06-02-00176-CV, 118 SW3d877, 10-02-03)

03-1064 JOE SINGLETON, ET AL. v. GEORGE E. DONALDSON, III; from Hardin County; 9th district (09-02-00500-CV, 1117 SW3d516, 09-25-03).

03-1102 DAVID WELLS v. MICHAEL IRVIN; from Dallas County; 11th district (11-02-00124-CV,__SW3d__,10-16-03)

03-1110 CAROLYN C. TAUB, EXECUTRIX OF THE ESTATE OF JOHN BEN TAUB, DECEASED v. FRANK E. NADOLNEY; from Harris County; 14th District (14-02-00392-CV,116SW3d273, 08-12-03)
(Justice Jefferson not sitting)

04-0296 JOSE F. OLIVARES AND NANCY C. OLIVARES, INDIVIDUALLY AND AS TRUSTEE v. BIRDIE L. NIX TRUST; from Bexar County; 4th district (04-02-00942-CV,___SW3d ___, 11-05-03)

FILED
IN THE SUPREME COURT
OF TEXAS
MAR 08 2004
ANDREW WEBER, Clerk
By_____Deputy

NO. 03-1141

IN THE
SUPREME COURT
Jose F. OLIVARES and Nancy C. Olivares,
Individually and as Trustee
Petitioners
v.
BIRDIE L. NIX TRUST
Respondent

On appeal from the Fourth Court of Appeals
San Antonio, Bexar County, Texas

MOTION FOR REHEARING

Jose F. Olivares, and
Nancy C. Olivares, pro se
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San Antonio, Texas 78201
Telephone: (210)735 5401
Fax: None

TO THE HONORABLE SUPREME COURT OF TEXAS:

Jose F. Olivares and Nancy C. Olivares, Individually and as Trustee, file their Motion For Rehearing (MFR), as follows:

I.

Petitioners ask that the Petition For Review (PFR) be reconsidered in light of "due process" and "equal protection under the law" entitlement, which the Court of Appeals and

the lower courts have heretofore denied them. They also emphasize that each and every issue presented has statewide significance because the November 5, 2003 Opinion usurps long established law, opening wide a trap door to unnecessary litigation. On the issue of judicial lien creation, the same is without authority. The Court enhances into law an excuse for the negligent judgment creditor to end run the requirements of §52.003, Texas Property Code. Also, a talismanic "vesting" of judgment rights has been scripted to resuscitate a dormant judgment where the "sleep at the switch" creditor (Birdie Nix Trust, BNT) has failed to keep its asset alive in the way set forth by §34.01, V.T.C.A, Civil Practice and Remedies. But, no case law foundation is provided as to how an alleged involuntary lien can "vest"; or, how an involuntary lien can rise to the privity level of voluntary liens. The blurring of vital involuntary-voluntary differences is significant in two of the points addressed by the Court of Appeals. Along with others, the holdings on §52.003 and §34.01 constitute new law that will be confusing to those involved in commerce where well settled property law is relied upon. Historically, new law results in increased litigation. At this time, there is no compelling need for it.

The trial court was concerned with the non-existent right to "notice" of the judgment lien holder and the appellate court side tracked the main issue (lack of §52.003 compliance), committed the aforesaid errors, creating new law in its effort to agree with the notice misconception.

II.

Petitioners re-urge the PFR, which very ably presents the errors committed by the trial and appellate courts. No exception is made therein to the erroneous date on page 3 of the Opinion as to the date (12/31/77) when the Urban Renewal Agency of the City of San Antonio commenced condemnation of the subject real estate. It may not be

material to the issues; but, in view of the turn matters have taken, Petitioners believe it bears on the apparent concern with "notice" to the involuntary lien holder, that permeates through the Opinion. Petitioners would have this Court also know its importance on the "due process" and "equal protection" deprivations they have suffered, from the May 6, 1976 filing of the first, illegal condemnation statements, as C-1353 and C-1354 in County Court at Law No.6. The present cause was filed on March 22, 1977, the day after George W. Warner forced dismissal of the first illegal filings. (See, ***Warner v. City of San Antonio,*** 564 S.W.2d 435). It was not filed on December 31, 1977, as erroneously stated in the Opinion. It behooves Petitioners to correct this misstatement of fact. Also, and not to detract from the centrality of the issue, facts as to the two addresses are minimally detailed under the Argument And Authorities of Issue One (PFR, p. 7). The facts thereof are also addressed and expanded hereafter.

III.

In affirming the trial court, the Court of Appeals violates cardinal principles in that courts lack authority and power to create ways and/or means to reach objectives contrary or alien to the specific manner that the legislature has set out to accomplish the objective, as it did in Section 52.003, Texas Property Code. To sidetrack case law of long standing (without variance), the appellate court simply created a saving route for the careless and negligent judgment creditor. On page 9 of the Opinion the Court first misstates:

"***Jose Olivares admitted that the address designation of his office changed, but there is no testimony that the second address was revealed as an updated address to BNT.***" (par. 2, ln. 8).

Although of no consequence to the ultimate issue, Olivares testified that while ***Nix v. Olivares*** action was pending, the street number was changed (by the City of San Antonio) from 722 to 332 W. Commerce Street (Record of Statement of Facts, Vol. 2 of 7, p. 126, 127, 212-213, also Exhibit MFR-1, attached). In Anglo-saxon litigation, the burden was on BNT and its counsel to question the variance in address at the time it first appeared in the record or at the very latest when the abstract was requested from the clerk. In ***Caruso v. Shropshire***, 954 S. W.2d 115 (Tex. App.-San Antonio 1997), the Court itself reiterated that:

"***It is well settled in Texas that it is the judgment creditor's responsibility to insure that the clerk abstracts the judgment properly***".

Shifting of the burden at this stage is a change of the rules, not directed at the general public, and therefore a denial of Petitioners' "due process" and "equal protection of the law" rights. On paragraph 4. ln 1, of the Opinion, the bias and favoritism for BNT is revealed by the creation of a "new way" to excuse a judgment creditor's failure to comply with the statute, to-wit:

"***A creditor should not be left to decipher which address or how many addresses to include in the abstract of judgment, but should simply ensure that proper service is carried out and that the citation is sufficient to provide notice***".

This Court denied a writ on ***Citicorp Real Estate, Inc. v. Banque Arabe Internationale D' Investment***, 747 S.W.2d 926 (Dallas-1988), where the Court said:

"***A defendant's prior or present public figure status does not obviate the need for substantial compliance with the statutory lien requirements***". 747 S.W.2d @ 931

in reversing the trial court because it:

"***....effectively created a 'public figure' exception to the statutory lien requirements***.

Citicorp., supra, is cited by the Court but, its thrust is missed. As a matter of law, the Court should have reversed on the basis that the trial court has no authority or power to create a "more than one address exception"; or, one titled "do not leave creditor to decipher". The trial court did not actually create any exceptions; nor, did it make the findings of fact or conclusions of law, as requested by Petitioners[1]. The creativity of the strained exceptions belong to the appellate court, apparently to help the creditor who was grossly negligent in protecting its assets. Moreover, there is no evidence in the record that BNT even tried to "decipher" the address variance or what hurdles kept it from doing so. See, ***Goldston Corp. v. Hernandez***, 714 S.W.2d 350 (Tex. App.--Corpus Christi 1986, dwrit ref'd n.r.e.). Also of note is fact that the Court confuses issues, to-wit:

"..... ***but (creditor) should simply ensure that proper service is carried out and that the citation is sufficient to provide notice***". (from above, Opinion p. 9, par. 4, ln. 1; ("creditor" inserted for readability)

Compliance with Section 52.003 has nothing to do with the propriety of service or the sufficiency of notice. It has everything to do with the creation of a judgment lien. The requirements of Section 52.003 are the "...statutory means by which a lien having no previous existence comes into being". ***McGlothin v. Coody, et al***, 39 S.W.2d133, 134 (Tex. Civ. App.); Also, ***Burton Lingo v. Warren***, 45 S.W. 2d 750 (Civ. App. 1932); and, ***Spence v. Brown***, 25 S.W. 413

IV.

In its ardour to save BNT, once the exceptions were created, the appellate court availed itself of the conditional requirement available under § 52.003 only when and if address(es) of the defendant(s) are not in suit. In this case the address is found in a number of documents. The transgression is clear and indefensible and declining the

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[1] BNT did not request any findings

review of the unique facts[2] thereof is not only an endorsement of the "due process" and "equal treatment of and under the law " denial, but a promotion of litigation on issues long determined. Bankruptcy and other federal courts rely on such lynch pins of real estate law, e.g. ***U. S. v. Blakeman***, 750 F.Supp. 216 (N.D. Texas 1990). Title insurance issuers will suffer through a period of confusion in what has been law of long standing. Moreover, this Honorable Court has an opportunity to speak on the "nature of citation, and date and place of citation", which the abstract of judgment simply recites as: "***the Defendant was served on July 24, 1969 in Bexar County, Tx.***". It does not recite whether the service was personal, under Rule 106, or by publication.

V.

Likewise and perhaps even more contrary to deep rooted law is the talismanic holding that a legally dead judgment, of no force and effect, can be resurrected by means other than those specifically legislated. Section 34.001V.T.A. C. Civil Practice And Remedies. The error is compounded because the trial court did not find as fact or conclude as law that BNT's judgment, or judgment lien, or rights thereunder "vested" upon its intervention in the condemnation of Petitioners' land with allegations of a judgment lien, that remains unproven to date. In what amounts to a sleight of hand, the Court of Appeals equates an alleged involuntary judgment lien such as BNT's to one

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[2] No case has been found where the address has actually been in the suit. They simply recite that no address is shown on the abstract or sufficient address.

that is voluntary, despite fact that the Judgment Nunc Pro Tunc itself on page 1 recites that BNT is an "alleged lienholder" (Appendix Tab 2, Petition For Rehearing and Exhibit MFR-2). The Court's dexterity is demonstrated by its own admission;

> ***"We recognize that a more recent case, however, states that when the condemnation proceeds are deposited, the 'lien' of a mortgagee is effectively transferred from the property into the deposit." Wynnewood Bank and Trust, 767 S.W.2d at 496*** (emphasis added)

Other cases cited[3] do not involve involuntary liens. A mortgage, like a lease, is based on contract. The relationships between the judgment creditors, such as BNT, and their debtors lack privity ***Mercer v. Bludworth***, 715 S.W.2d 693 (Tex App.-Houston [1st Dist] 1986). Therefore, vesting is not feasible until the creditor proves a statutory origin of his judgment lien, ***Nichols v. Cansler***, 140 S.W.2d 254 (Tex. Civ. App. Fort Worth 1940, writ dsmis'd, judgment corrected); ***Alkas v. United Sav. Ass'n of Texas, Inc.***, 672 S.W.2d 852 (Tex. App.-Corpus Christi 1984), writ ref'd. This has never been done. Back in December 1978 BNT "selected not to make an appearance" (See, the Final Judgment Nunc Pro Tunc, p. 1, PFR Appendix Tab 2, trial and by that fact forfeited its right to prove its lien, if any, before any fact finder. Petitioners were present, able and willing to challenge the alleged lien and BNT's failure to appear entitled owners to default. Deprivation thereof by whatever arrangement, outside the record, between BNT and the condemnor, is a clear deprivation of "due process" and "equal protection of and under the law". The proper and only finding of fact and/or conclusion of law that the courts below

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[3] Buell Realty Note Collection Trust v. Central Oak Inv. Co., 483 S.W.2D 24 (Tex. Civ. App.-Dallas 1972), writ ref'd, n.r.e., 486 S.W.2d 87 (Tex. 1972) per curiam and Fort Worth Concrete v. State, 400 S.W. 314 (Tex. 1966)

were authorized to make is that BNT made a defacto dismissal or withdrawal of its intervention when it wholly failed to keep the judgment alive. Even if its judgment lien had been valid, failure to prove its validity before the judgment expired, as required by law, leaves BNT's lien without under-pinning whatsoever, ***Burton Lingo v. Warren***, supra. Between March 15, 1976 and 2002, BNT wholly failed to make record proof in any proceeding that it owns a judgment that is final, properly abstracted and indexed. In reversing the judgment for Jones, the Court in ***Allied First Nat. Bank v. Jones***, 766 S.W.2d 800 (Tex. App.--Dallas 1988) stated:

"Therefore, Jones had to prove as a matter of law that he had a valid final judgment against Shelton and that the judgment was properly ***abstracted and indexed, thereby creating a valid lien against Shelton's property***. **TEX. PROP. CODE ANN. § 52**.001(Vernon 1984)". 766 S.W. 2d @ 801.

The door to "vesting" was opened by the appellate court. Vesting is not found in the trial court record. At all times, Petitioners have propounded that limitations renders the judgment unenforceable as of March 15, 1986. §52.006, Texas Property Code. On these record facts, the only vesting is as to Petitioners' right to rely on the statute that bars the judgment. See, ***Mann v. Jack Roach Bissonnet, Inc.***, 623 S.W.2d 716, (Tex. Civ. App.-Houston [1st Dist.] 19981, no writ); ***McCain v. Yost***, 284 S.W.2d 898 (1955); **TEX. CONST.** Art. I § 16. In sum, BNT failed to prove its judgment, a valid abstract thereon and its indexing before the vesting of Petitioner's limitation rights.

VI.

The blurring of the differences between involuntary and voluntary liens also affects the issue of title. The PFR argument and authories on the issue correctly and pointedly rebut the mistaken ruling and Petitioners re-urge it earnestly.

Briefly, the posture taken for Petitioners is; "At the time of these non-judicial foreclosures, December 2, 1975, the Respondent was only a judgment creditor and not a judgment lienholder.." (PFR. p. 9) and cases cited to support it[4]. The focus here amplifies fact that as an involuntary lienholder, BNT had no interest in the property until such time as it proved its judgment lien and judicial foreclosure connected the alleged lien to the subject property[5]. Its intervention pleading alleged a valid abstract of judgment and global allegations of fraud. But, no fraudulent intent was proven against anyone and the trustee's deeds were not shown to be void, ***Estelle v. Hart***, 55 S.W.2d 510, (Tex. Comm'n App. 1932, opinion adopted). Notwithstanding its lack of standing, BNT complained of mere irregularities as to which only the mortgagor (Petitioner Jose F. Olivares) had the privity to challenge them or the sale, as voidable (***Texas Osage Co-Operative Royalty Pool v. Crighton***, 188 S.W.2d 230d (Tex. Civ. App. 1945, writ ref. w.o.m.). A reading of the Opinion and the trial court record leaves no other conjecture that the irregularity leading the Court to blur the involuntary-voluntary lien differences is BNT's after the fact cry that it did not know about the interest and claims of the mortgagee, Warner. In other words, it had no notice. In the next heading, Petitioners address the falsity of this contention in the context of how the deference to BNT and others have

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[4] Goswami v. Metropolitan Savings and Loan Association, 751 S.W.2d 487, 489 (Tex. Sup.-1988); Mercer v.Bloodworth (sic Bludworth) 715 S.W.2d 693,698 (Tex. Civ. App.-Houston [1st dist.] Writ ref'd, n.r.e; and Houston Investment Bankers Corporation v. First City Bank of Highland Village, 640 S.W.2d 660,663 (Tex. Civ. App.-Houston 1982) No writ.

[5] The abstract of judgment does not identify any real estate and there is nothing in the record showing that the alleged lien is on a specific real property.

been at the expense of Petitioners' "due process" and "equal protection under the law" entitlements.

VII.

The saga began with the illegal filing on May 6, 1976 of C-1353 and C-1354[6]. The filing was illegal because the authority therefore was under Art. 1269L-3, §15, and §16, Tex.Rev.Civ.Stat.Ann. Tex. Stats., but the attorney[7] for the Urban Renewal Agency filed it in behalf of the City of San Antonio (See, ***Warner v. City of San Antonio*** 564S.W.2d 435). Warner and Petitioners opposed the taking from its political inception. URA's attorney sought to fudge the record by merely changing the name of the Plaintiff. Any possibility for resolution was dashed when URA took actual possession of the realty on September 16, 1976 under an illegal writ or no writ; and, never returned them to owners. In ***Warner***, supra, the Court sums up the lack of "due process' and "equal protection of the law" as: "***Appellants herein appear to have been badly treated***". It also set out the law of the case, which the trial court did not follow:

"***Any damage appellants have or may suffer through the admittedly erroneous actions of the Urban Renewal Agency may be recovered in the refilled case currently pending in the trial court. Alexander v. City of San Antonio,, Tex. S. Ct. 468 S.W.2d 797.***"

Significant here is fact that BNT filed an intervention in said causes. After becoming a court matter, their dismissal was forced by Petitioners on March 21, 1977 because URA's attorney did not have authority to condemn in the name of the City of San Antonio. Without returning possession of the

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[6] The Urban Renewal Plan as approved by the City Counsel designated the subject properties as "Not to be Acquired" See, Exhibit MFR-4 attached. .

[7] Phillip D. Hardberger, a personal injury specialist, later a member of the San Antonio Court of Appeals.

properties, URA filed the present case the very next day, March 22, 1977. The mandatory prefiling prerequisites for legal condemnation were not followed between the dismissal and refiling. BNT again intervened and did so with full knowledge and notice of the interests claimed by Warner and Petitioners. This second filing was after the actual, illegal taking and when the properties were no longer in the owners' possession. No Texas case law has been found dealing with a similar situation. BNT did not oppose or appeal the dismissal, and as aforesaid, it "selected not to appear" at the Decembr 4, 1977 trial (Final Judgment Nunc Pro Tunc, p.1, PFR, Appendix Tab 2 and Exhibit MFR-2). "Due process" and "equal protection of and under the law" rights were also violated by the interlocutory "Final Judgment Nunc Pro Tunc" prepared by URA counsel, as hereafter more fully stated. It should be noted that before appealing the trial court judgment, Petitioners asked the Court to mandate the lower court,[8] upon its refusal, to enter a proper final judgment on the verdict, complaining also that by avoiding the title issue, an illegal severance was made by the trial court.

VIII.

The second condemnation case, also illegal because the properties were in the tortious possession of the condemnor when its statement was filed, was transferred to the district court because County Court at Law No. 6 opined issues of title existed. In attempting the conclusion of what is now a 25 year siege, with further injury to the owners, the attorney for URA submitted and the Court signed the interlocutory judgment, supra. Notwithstanding the case was transferred to the district for the purpose of resolving title issues, if any, the judgment fails to "resolve all issues as to all parties". ***Houston Health Clubs v. The First Court Of Appeals***, 722 S.W.2d 692 (Tex. 1986). On page 5 (vol.

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[8] Petition For Mandamus (225 th Judicial District Court) No. 04-02-00607-CV in the Fourth Court of Appeals

297A, page 362) of the Final Nunc Pro Tunc Judgment (PFR, Appendix Tab 2 and Exhibit MFR-3), the words that follow render it interlocutory and ineffective for divesting owners' title, *City of Paris v. Tucker*, 104 S.W. 1040 (Sup. Ct. 1907):

> ***"It is, therefore, ORDERED, ADJUDGED and DECREED, that the Plaintiff make a general award of the additional sum of Seven Hundred & Fifty Dollars and No/Cents ($750.00) plus accrued interest thereon in lump sum and deposit said sum in the Registry of County Court at Law No. 6 subject to the interests of the owners and claimants of the property; said interest to be later disposed of in a proper Motion for Adjudication To Question Of Title.*** (emphasis added)

Although not stated in *City of Paris*, supra, the reason for title not being divested has to be grounded on the ancient principle of tender. *In Universal Credit Co. v. Cole*, 146 S.W.2d 222, (Tex. Civ. App.-Amarillo, 1940, no writ), the Court said:

> ***"To constitute valid and legal "tender" of money, tenderer must relinquish possession thereof for sufficient time and under such circumstances as to enable person to whom it is tendered to acquire possession thereof without special effort on his part".***

The very fact that Petitioners are before this Honorable Court in an effort to acquire possession of the money is more than sufficient proof that the award has never been available unconditionally. Denying Petitioners the right to try the issue of title before the same jury that tried the fair market value; alternatively, denying them a default judgment against parties with a justiciable interest who "selected not to appear", and along with the Court of Appeals' unwillingness to apply established law for benefit of Petitioners' amounts to a continuing deprivation of the "due process" and "equal protection of and under the law" they are entitled to.

The sovereign is in no different standing than an individual when it comes to tender or payment of consideration. The trial court owed Petitioners and URA a duty to adjudicate the issues of title before the same jury that the court limited to decide only the fair market value, at URA's instance. Petitioners had a substantive right to have the title issue tried at that time. URA's attorney prevailed on the trial court to sanitize the proceedings (not to try title before the jury) in order to keep evidence out on the fair market value. By so doing, URA waived its right to divest owners' title.

IX.

Petitioners also make it an explicit matter of record that Jose F. Olivares is a Hispanic and Nancy C. Olivares has a Hispanic name. They do not waive, but at all times assert that because of said facts they have been discriminated against and at all relevant times deprived of their entitlements under the "due process" and "equal protection of and under the law", guaranteed to them by the Constitutions of Texas and the United States.

WHEREFORE PETITIONERS, pray that upon consideration hereof, its Order of January 23, 2004 be withdrawn and their Petition For Review granted. Once it is reviewed, they ask that the Opinion of the Court of Appeals be vacated and for all other relief requested in their Petition.

Respectfully submitted,

Jose F. Olivares
151 North Drive
San Antonio, Texas 78201

Nancy C. Olivares
Individually and as Trustee

CERTIFICATE OF SERVICE

A copy of the foregoing Motion For Rehearing has been mailed to Douglas W. Sanders, 711 Navarro Street, San Antonio Texas 78205; and, to Pepos S. Dounson, Esq., 914W. Mistletoe Avenue, San Antoni Texas 78201-5649, on this 8th day of March, 004.

_____

THE MOTIONS FOR REHEARING OF THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED

03-375 ALAN D.L BARIBEAU, M.D., AND ALAN D. BARIBEAU, M.D., P.A., INDIVIDUALLY AND D/B/A CATARACT AND LASER INSTITUTE, AND CENTER FOR LASER ENHANCEMENT v. LYNN GUSTAFSON; from Bexar County; 4th district (04-01-00732- CV, 105 SW3d28, 01-23-03

03-0909 TIMOTHY D. O'CONNOR AND LACO DEVELOPMENT, INC.D/B/A LACO CONSTRUCTION COMPANY v. DENNIS E. JENNINGS, KIMBERLY E. JENNINGS AND SAN ANTONIO FEDERAL CREDIT UNION D/B/ASACU; from Bexar County; 4thdistrict 4th district (04-00-00714-CV,115 SW3d82, 07-02-03)

(Justice Jefferson not sitting)

03-1112 IVO NABELEK v. GERALD GARRETT, ET AL.; from Harris County; 14th district (14-01-01007-CV,94SW3d648, 04-03-03)
as supplemented

04-0296 JOSE F. OLIVARES AND NANCY C. OLIVARES, INDIVIDUALLY AND AS TRUSTEE v. BIRDIE L. NIX TRUST; from Bexar County; 4th district (04-02-00942-CV, 126 SW3d 242, 11-05-03)
motion to consolidate dismissed as moot

THE FOLLOWING PETITIONS FOR WRIT OF MANDAMUS ARE DENIED

03-721 RE HOUSTON VILLAGE BUILDERS, INC.; from Harris County; 14th district (14-01-01005-CV, 105 SW3d28, 01-23-03
[**Note**: This petition for writ of mandamus was consolidated with case number 03-0621.]
(Justice Brister not sitting)

03-0762 IN RE TRI-STAR PETROLEUM COMPANY; from Midland County; 8th district (08-02-00305-CV,___SW3d___, 05-29-03)
Motion to consolidate dismissed as moot

03-1179 IN RE HIGHLAND PINES NURSING HOME, LTD., D/B/A HIGHLAND PINES NURSING HOME, STEBBINS AVIATION, INC., STEBBINS FIVE COMPANIES, LTD., JASON RYDEN, INDIVIDUALLY, AND ELJIE EDWARD BRANTLEY, R.N., INDIVIDUALLY; from Gregg County; 12th district (12-03-00050-CV, ___SW3d ___, 10-09-02)

04-0296 IN RE JOSE F. OLIVARES AND NANCY C. OLIVARES, INDIVIDUALLY AND AS TRUSTEE; from Bexar County; 4th district (04-02-00607-CV,___SW3d___, 11-13-03)

637400

THE STATE OF TEXAS) Mar-15-76 3 7 4 7 3 B---I
COUNTY OF BEXAR,)

I Elton R. Cude, Clerk of the District Court in and for Bexar County, Texas, do hereby certify that in the 37th Judicial District Court in and for Bexar County, Texas, in a certain suit pending in said Court, wherein Birdie L. Nix Trust is plaintiff, and Joe Olivares, Sr. and Jose F. Olivares, whose birth or driver's license are unknown to this clerk are Defendants. No.FxF-213,806 the said plaintiff Birdie L Nix Trust recovered a judgment against the said defendants Joe Olivares, Sr., who was served with Citation on July 23, 1969 and Jose F. Olivares who was served on July 24, 1969 in Bexar County, Tx. on the 24th day of November A.D. 1975, for the sum of $20,921.45 with interest on said amount from the 24th day of November A.D. 1975, at the rate of six per cent per annum and $107.50 costs of suit. Said judgment is of record in Vol. 213A Page 1237-38 Records of said Court.

Said judgment is entitled to the following credits, to wit none There is now still due on said judgment $20,921.45 with interest on said amount from the 24th day of November A.D. 1975, at the rate of six per cent per annum and $107.50 costs of suit.

GIVEN UNDER MY HAND and the Seal of office, at San Antonio, Texas, this the 15th day of March A.D.1976

ELTON R. CUDE

Clerk of the District Courts in and for Bexar County, Texas By "s/Amelia H. Guillen"

CERTIFICATE

The page to which this certificate is affirmed is a full, true and correct copy of the original on file and at records of cnty office. ATTESTED: GERRY RICKHOFF, COUNTY CLERK, BEXAR COUNTY, TEXAS BY: "s/DW." Deputy
Seal:DISTRICT COURT OF BEXAR COUNTY,TEXAS

VOL 140 PAGE 197

BEXAR Seal: (THE STATE OF TEXAS) COUNTY

REAGAN E. GREER

DISTRICT CLERK

CERTIFICATION OF NO EXECUTION ON DORMANT JUDGMENT CAUSE NO. F213,806

BIRDIE L. NIX TRUST **IN THE DISTRICT COURT**

VS. **37th JUDICIAL DISTRICT**

JOE OLIVARES, Sr.,et al **BEXAR COUNTY, TEXAS**

THE RECORDS OF THIS COURT, IN WHICH A JUDGMENT WAS RENDERED ON THE 24th DAY OF NOVEMBER, 1975, RECORDED ON VOLUME 213A PAGE 1237-1238 OF THE MINUTES OF THE 37th JUDICIAL DISTRICT COURT OF BEXAR COUNTY, DO INDICATE A WRIT OF EXECUTION HAD BEEN ISSUED TO RENEW THE ATTACHED JUDGMENT IN ACCORDANCE WITH SEC. 34.001 (VERNON'S ANNOTATED RULES AND CIVIL STATUTES). THIS WRIT OF EXECUTION WAS ISSUED ON JANUARY 23, 1976 AND HAS SINCE EXPIRED. NO OTHER EXECUTION HAS BEEN ISSUED.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF SAID COURT AT OFFICE IN THE CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ON THIS 21st DAY OF JUNE, A.D., 2002.

REAGAN E. GREER, DISTRICT CLERK

Bexar County, Texas

Seal BY "s/Chris Castillo" , DEPUTY

BEXAR COUNTY COURTHOUSE*100 DOLOROSA*

SAN ANTONIO, TEXAS 78205-3002*(210)A335-2113

STATUTES & RULES:

TEXAS PROPERTY CODE ANN

§ 52.003. CONTENTS OF ABSTRACT

(a) An abstract of a judgment must show:

(1) the names of the plaintiff and defendant;

(2) the birthdate and driver's license number of the defendant, if available to the clerk or justice;

(3) the number of the suit in which the judgment was rendered;

(4) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;

(5) the date on which the judgment was rendered;

(6) the amount for which the judgment was rendered and the balance due;

(7) the amount of the balance due, if any, for chilc support arrearage; and

(8) the rate of interest specified in the judgment

§ 52.006 DURATION OF LIEN

A judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

V.T.C. A.. CIVIL PRACTICE & REMEDIES CODE .,

34.001[b] No execution on Dormant Judgment

(a) If a writ of execution is not issued within 10 years after the rendition of a judgment of a court of record or a justice court, the judgment is dormant and execution may not be issued on the judgment unless it is revived.

(b) If a writ of execution is issued within 10 years after rendition of a judgment but a second writ is not issued within 10 years after issuance of the first writ, the judgment becomes dormant. A second writ may be issued at any time within 10 years after issuance of the first writ.

§ 38.001. Recovery of Attorney's Fees
A person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for:

(1) rendered services;
(2) (performed labor
(3) furnished material;
(4) freight or express overcharges
(5) lost or damaged freight or express
(6) killed or injured stock;
(7) a sworn account; or
(8) an oral or written contract

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985.

RULE 41. MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added, or suits filed separately may be consolidated, or actions which have been improperly joined may be severed and each ground of recovery improperly joined may be docketed as a separate suit between the same parties, by order of the court on motion of any party or on its own initiative at the stage of the action, before the time of submission to the jury or to the Court if trial is without a jury or to the court if trial is without a jury, on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Notes and Comments

Source: Federal Rule 21

RULE 300. COURT TO RENDER JUDGMENT RULE

Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated the court shall render judgment thereon unless set aside or a new trial is granted, or judgment is rendered notwithstanding verdict or jury finding under these rules.

Notes and Comments

Source: Art. 2209, with minor textual change.

RULE 301. JUDGMENTS

The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Provided, that upon motion and reasonable notice the court may render judgment non obstante veredicto if a directed verdict would have been proper, and provided further that the court may, upon like motion and notice, disregard any jury finding on a question that has no support in the evidence. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors.

Amended by order of July 15, 1987, eff. Jan. 1, 1988.

Notes and Comments

Source: Art. 2211